SUPREME COURT OF THE UNITED STATES

October Term, 1951

No. —

THE UNITED STATES OF AMERICA, EX REL. KNUT EINAR HEIKKINEN, PETITIONER,

vs.

HARRY GORDON, OFFICER IN CHARGE, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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1 United States District Court, District of Minnesota, Fifth Division

Case No. 1101, Civil

UNITED STATES OF AMERICA EX REL. KNUT EINAR HEIKKINEN, RELATOR,

vs.

HARRY GORDON, OFFICER IN CHARGE, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE, RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS—October 27, 1950

To the Honorable Judges of the United States District Court for the District of Minnesota, Fifth Division:

Now comes your petitioner, Knut Einar Heikkinen, and respectfully represents as follows:

I

That your petitioner entered into the United States of America legally during either the month of September or October, 1916, and has resided in the United States of America for a considerable period of time. That he is an Alien. That he is an editor of a Finnish newspaper published in Superior, Wisconsin, and is a law-abiding person.

2 II

That your petitioner resides in Superior, Wisconsin. That he is 60 years of age. That he is married, but does not reside with his family at the present time.

III

That a warrant of arrest was issued for the apprehension of your petitioner, and he was arrested pursuant to said warrant in New York City, New York, on or about November 21, 1949.

IV

That your petitioner was subsequently released under bail of $5,000.00 on or about eight days after his arrest.

V

That on or about October 23, 1950 your petitioner was re-arrested, and taken into custody under and by virtue of the authority of the United States of America, as he is informed and believes, and is now in actual custody in the County Jail, in Duluth, St. Louis County, Minnesota.

VI

On information and belief, the only claim and sole authority, by virtue of which the respondent so restrains and detains your petitioner, is instructions from the Attorney General of the United States.

VII

That deportation proceedings have been instituted against your petitioner. That said proceedings, as your petitioner is informed and believes, have been brought under the Act of October 16,
3 1918 as amended, or other provisions of the Immigration Laws of the United States.

VIII

That hearings in said deportation proceedings have neither been held nor completed, and no findings of fact or conclusions of law have been proposed by any hearing examiner or other officer under authority of any statute of the United States.

IX

That until his recent re-arrest on or about October 23, 1950, in Superior, Wisconsin, your petitioner was at liberty on bail in the amount of $5,000.00, as stated hereinabove.

X

On information and belief, your petitioner states that the reason or explanation of the cancellation of his bail and his re-arrest is the enactment of September 23, 1950 of the Internal Security Act of 1950, particularly Section 23 (a). That Section 23 (a) of said Internal Security Act of 1950 provides as follows:

> "Pending final determination of the deportability of any alien taken into custody under warrant of the Attorney General, such alien may in the discretion of the Attorney General (1) be continued in custody; or (2) be released under bond in the amount of not less than $500, with security approved by the Attorney General; or (3) be released on conditional parole."

XI

Said provision does not authorize or permit such an arrest as was here made for the reason that your petitioner had already been released on bail, and said statute does not authorize re-arrest
4 after release on bail, but only provides that upon his arrest he be *"continued"* in custody. That such re-arrest cannot be interpreted to be nor to mean *continued custody.*

XII

That said provisions of said Section 23 (a) are null, void and of no effect, and that said provisions are in violation of the Fifth and Eighth Amendments of the Federal Constitution, which provide as follows:

"No person shall . . . be deprived of life, liberty or property without due process of law.

Excessive bail shall not be required . . .".

XIII

That the action of the Attorney General in cancelling the bail of your petitioner, and having him re-arrested, is an abuse of discretion on his part, or an abuse of discretion on the part of those acting pursuant to his order or request. That the action of said Attorney General is arbitrary.

XIV

That the abuse of discretion, and the alleged arbitrary action of the Attorney General, or those acting pursuant to his order or request, is subject to review by this Honorable Court.

XV

That considerable time has elapsed since the issue of the warrant of arrest on or about November 21, 1949, and your petitioner is informed and believes that some considerable time will elapse before a hearing will be had in the deportation proceedings.

5 XVI

That your petitioner is informed and believes that he is not imprisoned or detained by virtue of any process or mandate issued by any Court of the United States, or any judge thereof, nor is he committed or detained by virtue of a final judgment or decree of any competent tribunal made in any proceedings, special or otherwise, instituted for any cause or by virtue of executive order, or process issued upon a judgment, decree or final order other than as aforesaid, and the attempt and action on the part of the Attorney General of the United States to detain him in custody is unfair and violates the provisions of the Federal Constitution as above stated, and any other provisions of said Constitution, which may be applicable in the premises.

XVII

That your petitioner is informed and believes that he may be removed to other parts of this country, and that he respectfully

requests that any and all future proceedings herein be held in this District.

XVIII

That your petitioner is detained by Respondent, Harry Gordon, Officer in Charge, Immigration and Naturalization Service, Department of Justice, at Duluth, Minnesota, and by his agents or deputies.

WHEREFORE: Your petitioner prays that this Court may proceed in a summary way to determine the facts in regard to the legality of the imprisonment, re-arrest, and detention of your petitioner, in such manner as law and justice will require, and to order the
6 issuance of an Order to Show Cause, or a Writ of Habeas Corpus, requiring the Respondent to produce before this Honorable Court the body of your petitioner, together with the cause of his detention, and after a hearing on said Writ or Order to Show Cause, petitioner respectfully prays for his discharge for the reason set forth herein, and prays for any other and further relief that the Court may deem fit and proper.

Dated at Duluth, Minnesota, October 27th, 1950.

(Signed) KNUT EINAR HEIKKINEN,
Petitioner.

7 United States District Court, District of Minnesota, Fifth Division

[Title omitted]

ORDER TO SHOW CAUSE—October 27, 1950

Upon the verified Petition for a Writ of Habeas Corpus of Knut Einar Heikkinen, a copy of which Petition is hereto attached and made a part hereof, and upon motion of Sidney E. Kaner and Albert E. Baddin, his attorneys,

IT IS HEREBY ORDERED, that you, Harry Gordon, Officer in Charge, Immigration and Naturalization Service, Department of Justice, Duluth, Minnesota, the Respondent herein, show cause before the above named Court on the 30th day of October, 1950, at Two (2:00) o'clock in the afternoon, on the Fourth Floor, Federal Court House, Duluth, Minnesota, or as soon thereafter as counsel may be
8 heard, why a Writ of Habeas Corpus should not be granted herein discharging the said Petitioner, Knut Einar Heikkinen, from custody, and why other appropriate relief should not be granted to your Petitioner in conformance with the hereto attached Petition.

Dated at Duluth, Minnesota, this 27th day of October, 1950.

DENNIS F. DONOVAN,
United States District Judge.

9 United States District Court, District of Minnesota, Fifth Division

[Title omitted]

RESPONDENT'S RETURN TO ORDER TO SHOW CAUSE—October 30, 1950

HOWARD H. GELB states and alleges that he is a duly appointed and acting Assistant United States Attorney for the District of Minnesota, and that he represents Harry Gordon, Officer in Charge, Immigration and Naturalization Service, Department of Justice, Duluth, Minnesota, and that he makes this Return to the Order to Show Cause issued herein, and makes this response to the Petition for Writ of Habeas Corpus:

I

Admits the allegations contained in Paragraph I of the Petition for Writ of Habeas Corpus, except that since he does not have
10 sufficient information and knowledge as to the allegation that petitioner is a law-abiding person, denies that allegation.

II

Admits the allegations contained in Paragraphs II, III, IV, V, VII, VIII, IX, X, and XVIII of the Petition for Writ of Habeas Corpus.

III

Answering Paragraph VI of the Petition for Writ of Habeas Corpus alleges that petitioner is restrained by authority of the Attorney General of the United States.

IV

Denies the allegations contained in Paragraph XI of the Petition for Writ of Habeas Corpus. Alleges that the term "continued" as used in Public Law 831—81st Congress (Internal Security Act of 1950), authorizes the respondent to replace the alien in custody after release on bond.

V

Denies the allegations contained in Paragraph XII of the Petition for Writ of Habeas Corpus. Alleges that excessiveness of bail is not an issue since no bail has been set yet. Denies that petitioner has been deprived of life, liberty or property without due process of law or that the placing of the petitioner in custody is in violation of the Fifth and Eighth Amendments to the Federal Constitution. Alleges that petitioner was arrested pursuant to a valid warrant of arrest issued by the Attorney General of the United States in accordance

with authority granted him by Congress. Alleges that the power granted by Public Law 831—81st Congress to the Attorney General to retain petitioner in custody is legal and constitutional and
11 that it is particularly warranted in view of the emergency situation which exists in this country at the present time as outlined in Section 2 of Public Law 831—81st Congress.

VI

Denies the allegations contained in Paragraphs XIII and XIV of the Petition for Writ of Habeas Corpus, specifically denies that the cancellation of the bail of the petitioner is an abuse of discretion on the part of the Attorney General or is arbitrary. Admits that where an abuse of discretion by the Attorney General is shown such abuse of discretion is subject to review by this Court. Alleges, however, that the burden of proof to show an abuse of discretion rests upon the petitioner.

VII

Answering Paragraph XV of the Petition for Writ of Habeas Corpus respondent alleges that a hearing will be scheduled for the petitioner; that respondent does not have sufficient information to form a belief as to the time that will be consumed by these proceedings but affirmatively states that this hearing and all proceedings relating thereto will be held and conducted as expeditiously as possible.

VIII

Admits the allegations contained in Paragraph XVI of the Petition for Writ of Habeas Corpus, except that he denies that the attempt and action on the part of the Attorney General of the United States to detain petitioner in custody is unfair or violates any provi-
12 sions of the Constitution of the United States.

IX

Answering Paragraph XVII of the Petition for Writ of Habeas Corpus, respondent alleges that he does not have sufficient information to form a belief as to the allegations contained in said paragraph and therefore denies the same.

X

Further alleges that the warrant of arrest by authority of which the petitioner was arrested is a lawful warrant of arrest; that the placing of the petitioner in the custody of respondent Harry Gordon initially on or about November 21, 1949 and subsequently on or about October 23, 1950 was a lawful exercise of the administrative power of the Attorney General of the United States. That the Attor-

ney General of the United States since 1903, under previous laws, and more recently under Public Law 831—81st Congress, has been empowered to take into custody and deport aliens unlawfully in the United States; that petitioner is a member of a category of aliens unlawfully in this country and subject to deportation; that the present detention of the petitioner is in pursuance of law.

WHEREFORE respondent having made a full and true Return to the Order to Show Cause heretofore issued and the Petition for Writ of Habeas Corpus attached thereto, prays that the said Petition be denied and that a Writ of Habeas Corpus not be issued and that petitioner be remanded to the custody of respondent
13 Harry Gordon to be dealt with according to the law of the United States of America.

Dated this 30th day of October, 1950.

(Signed) HOWARD H. GELB,
Assistant United States Attorney.

14 United States District Court, District of Minnesota, Fifth Division

[Title omitted]

MOTION TO DISMISS RETURN

The Relator moves the Court as follows:

To dismiss the Return of the Respondent in these proceedings, as it fails to state a sufficient or adequate reason for the confinement of the Relator.

SIDNEY E. KANER,
ALBERT E. BADDIN,
Attorneys for Relator.

15 United States District Court, District of Minnesota, Fifth Division

Case No. 1101, Civil

UNITED STATES OF AMERICA, EX REL. KNUT EINAR HEIKKINEN, RELATOR

VS.

HARRY GORDON, OFFICER IN CHARGE, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE, RESPONDENT

AFFIDAVAT IN SUPPORT OF MOTION

STATE OF MINNESOTA,
County of St. Louis, ss:

KNUT EINAR HEIKKINEN, being first duly sworn, on oath, deposes and says:

That he is the Relator in this cause, which is a proceeding involving a Petition for the issuance of a Writ of Habeas Corpus.

Affiant further states that at the time of his arrest on October 23, 1950, and at the time of the hearing on the Petition herein, neither he nor his attorneys, as he is informed and believes, had ample time to determine whether the bond or a bail heretofore posted for
16 him in the sum of $5000.00 was or was not still outstanding.

Affiant further states that by the very nature of these proceedings, it was necessary for him or his attorneys to proceed quickly and at once with a Petition for a Writ of Habeas Corpus.

Affiant further states that he is informed and verily believes that at the time of his re-arrest on October 23, 1950 the bond or bail described above was still uncancelled and in full force and effect.

Affiant further states on information and belief that said bond or bail was still uncancelled and in full force and effect after the hearing on said Petition.

Affiant further states that he makes this affidavit in support of his Motion hereto attached for the reconsideration of the Order or Judgment entered herein denying the Petition for the Writ of Habeas Corpus.

KNUT E. HEIKKINEN.

17 United States District Court, District of Minnesota, Fifth Division

[Title omitted]

MOTION FOR RECONSIDERATION OF ORDER DISMISSING PETITION FOR ORDER TO SHOW CAUSE AND FOR WRIT OF HABEAS CORPUS

The Relator moves the Court as follows:

1. To reconsider the Order or the Judgment entered herein on the 30th day of October, 1950 by Judge Dennis F. Donovan, to vacate said Order or Judgment, and to enter an Order or Judgment granting the Writ of Habeas Corpus and discharging Relator from the custody of Respondent.

This motion is made for the following reason, and on the
18 following grounds:

(a) That the Internal Security Act of 1950 is unconstitutional, as it violates the First, Fifth and Eighth Amendments to the Constitution of the United States.

(b) That the arrest of Relator was illegal, unlawful and made without a valid warrant, as the original warrant of arrest was no longer of any legal effect.

(c) That the arrest of Relator was made while bail in the sum of $5,000.00, or a bail bond in said amount, was still posted, uncancelled, outstanding and valid.

(d) That the Internal Security Act of 1950 itself does not provide for re-arrest while Relator was at liberty on bail or bond.

That a hearing before a Three Judge Court is requested. That in the case of *Hickman* v. *Taylor, et al.*, 4 F. R. D. 479, District Court, Eastern Division, Pennsylvania 1945, in a suit under the Jones Act, the case was heard before five District Judges.

SIDNEY E. KANER,
ALBERT E. BADDIN,
Attorneys for Relator.

19 United States District Court, District of Minnesota, Fifth Division

[Title omitted]

NOTICE OF MOTION FOR RECONSIDERATION

To: Respondent, Harry Gordon and

To: Howard Gelb, Assistant United States District Attorney, Attorney for Respondent, Federal Courts Building, St. Paul, Minnesota

Please Take Notice, that the undersigned will bring the hereto attached Motion on for hearing before a Three Judge Court of the United States District Court, in the appropriate Court Room of the United States District Court, Federal Courts Building, in
20 the City of St. Paul, County of Ramsey, State of Minnesota, on the 10th day of November, 1950, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

SIDNEY E. KANER,
ALBERT E. BADDIN,
Attorneys for Relator.

21 United States District Court, District of Minnesota, Fifth Division

[Title omitted]

RESPONDENT'S ANSWER TO NOTICE FOR RECONSIDERATION OF ORDER DISMISSING PETITION FOR ORDER TO SHOW CAUSE AND FOR WRIT OF HABEAS CORPUS

Comes now Howard H. Gelb and states that he is a duly appointed and acting Assistant United States Attorney for the District of Minnesota and attorney for the respondent herein; that for his answer to the Motion of the relator herein:

Denies each and every allegation set forth as grounds for said Motion by relator herein.

22 WHEREFORE the respondent prays this Court deny the Motion of the relator for Reconsideration of the Order Dismissing Petition for Order to Show Cause and for Writ of Habeas Corpus.

Dated at St. Paul, Minnesota this 7th day of November, 1950.

HOWARD H. GELB,
Assistant United States Attorney,
Attorney for Respondent.

23 United States District Court, District of Minnesota, Fifth Division

[Title omitted]

ORDER DENYING PETITION FOR HABEAS CORPUS—November 3, 1950

Present:

Messrs. Sidney Kaner and Albert A. Baddin, of Duluth, Minnesota, appeared in behalf of the Relator; and

Mr. Howard H. Gelb, Assistant United States Attorney, of St. Paul, Minnesota, appeared in behalf of the respondent.

24 We have here an Order to Show Cause why relator's petition for a writ of habeas corpus should not be granted. The proceeding arises out of the arrest and confinement of the relator on order of the Attorney General of the United States. It appears from the file that the undisputed situation is as follows:

That petitioner is a resident of the City of Superior, Douglas County, Wisconsin; that he is 60 years of age; that he is married but does not reside with his family at the present time; that a warrant of arrest was issued for the apprehension of petitioner and he was arrested pursuant to said warrant in New York City, New York, on or about November 21, 1949; that petitioner was subsequently released under bail of $5,000 on or about eight days after his arrest; that on or about October 23, 1950, the petitioner was re-arrested and taken into custody under and by virtue of the authority of the United States of America, as he was informed and believed, and is now in actual custody in the St. Louis County jail in Duluth, Minnesota; that deportation proceedings have been instituted against petitioner; that said proceedings, according to the information and belief of petitioner, have been brought under the Act of October 16, 1918, as amended, or other provisions of the immigration laws of the United States.

That hearings in said deportation proceedings have neither been held nor completed and no findings of fact or conclusions of law have been proposed by any hearing examiner or other officer
25 under authority of any statue of the United States; that until his recent re-arrest on or about October 23, 1950, in Superior, Wisconsin, petitioner was at liberty on bail in the amount of $5,000, as heretofore stated.

That petitioner was informed and he believes that the reason or explanation of the cancellation of his bail and his re-arrest is the enactment of September 23, 1950 of the so-called Internal Security

Act of 1950, particularly Section 23-A; that Section 23-A of said Internal Security Act of 1950 provides as follows:

"Pending final determination of the deportability of any alien taken into custody under warrant of the Attorney General, such alien may in the discretion of the Attorney General (1) Be continued in custody; or (2) be released under bond in the amount of not less than $500, with security approved by the Attorney General; or (3) be released on conditional parole."

That petitioner is presently detained by respondent Harry Gordon, Officer in Charge, Immigration and Naturalization Service, Department of Justice, at Duluth, Minnesota, and by his agents or deputies.

The necessity for the legislation, herein referred to as the Internal Security Act, is solemnly pronounced by the Congress in Section 2 thereof. Relator challenges the discretion vested in the Attorney General under Section 23-A of said Act, and challenges the validity of the proceedings herein, contending that the warrant upon
26 which respondent relies has been spent and that the Internal Security Act is unconstitutional, particularly in that it is claimed it violates the Fifth and Eighth Amendments to the Constitution of the United States. Relator also contends that the respondent having once released him and placed him on bail, that his re-arrest cannot be interpreted to mean "continued custody."

It appears from the warrant for arrest of the alien relator that he was to be taken into custody and deported for the following reasons:

"WHEREAS, from evidence submitted to me, it appears that the alien, Knut Einar Heikkinen, who entered this country at an unknown port subsequent to 1935 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to-wit: The Immigration Act of May 26, 1924, in that, at the time of entry, he was an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder; the Act of October 16, 1918, as amended, in that he was, at the time of entry, and after entry, a member of the following class, set forth in Section 1 of said Act; An Alien who is a member of an organization, association, society, and group that advises, advocates, and teaches the overthrow, by force and violence of the Government of the United States; and the Act of October
27 16, 1918, as amended, in that he was, at the time of entry, and after entry, a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, and group that writes, circulates, dis-

tributes, prints, publishes, and displays any written and printed matter advising, advocating and teaching the overthrow by force and violence, of the Government of the United States.

"I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law."

It is my opinion that the warrant in the case at bar was not spent, nor its vitality for the purposes for which it was originally issued destroyed or impaired by virtue of the release of the petitioner on bail. We are here concerned with a proceeding civil and not criminal in nature. In this proceeding the relator alien has the burden of proving his case.

The discretion exercised by the Attorney General herein, when he released relator on bail, was not irrevocable. Long prior to 1950, it was well established that the expulsion of aliens is a sovereign power necessary to the safety of the country to be regulated by the legislative department by such statutes as it deems wise policy to require, as stated by the court in *United States ex rel. Zapp, et al.* v. *District Director, and so forth,* Second Circuit, 120 F. 2d 763.

28 Relator complains because release on bail was refused. The warrant for arrest originally directed relator's admission to bail, but later by direction of the Attorney General bail was refused.

The relator alien has no absolute right to freedom pending disposal of deportation proceedings. Paraphrasing the words of Solon, the Internal Security Act here criticized may not be perfect, but it is the best made available by the elected representatives of the people. The Act is the Law and the Attorney General of the United States is asking this Court to enforce it.

I cannot say on the showing made by relator that there has been an abuse of discretion by the Attorney General of the United States. He has seen fit to take the relator into custody and refuses to release relator on bail pending final disposition of the deportation proceedings commenced against him.

Relator's counsel, with a show of great ability and sincerity, have pointed out and emphasized to the Court the inconvenience that relator must put up with, and, granting this, yet the Court cannot use that as a basis for arriving at a conclusion that the relator has carried his burden of proof, which at the very least must be a clear and convincing showing that denial of bail was without reasonable foundation. See the *United States, ex rel. Potash* v. *District Director, and so forth,* 169 Fed. 2d 747. In Civil Case No. 3517, pending in the Fourth Division, District of Minnesota, entitled *Peter John Warhol* v. *Irvin F. Shrode, etc.,* Chief Judge Nordbye denied an application

for a writ of habeas corpus wherein the showing by Warhol at
29 the first hearing before Judge Nordbye was similar to the case made out for relator in the present case. Heikkinen did not testify although the Court suggested the desirability of calling him as a witness. Relator's petition and the return by respondent did not establish abuse of discretion on the part of the Attorney General for taking relator into custody after having previously released him on bail.

The petition, praying for an order declaring relator's imprisonment to be illegal and void, and granting him release from custody, must be, and the same hereby is, in all things denied, without prejudice, however, to relator's reopening for the purpose of presenting anything additional, and material in support of his claim that the Attorney General abused his discretion by detaining relator without bail. Such additional proceedings must be taken, however, within two weeks from the making of this Order.

Relator may have an exception.

Dated this 3rd day of November, 1950.

By the Court:

DENNIS F. DONOVAN.

Filed Nov. 3, 1950.

30 United States District Court, District of Minnesota, Fifth Division

[Title omitted]

STIPULATION RE MOTION—November 9, 1950

It is hereby stipulated, by and between Relator and Respondent herein, through their respective attorneys, that the following paragraph may be incorporated into the Motion for Reconsideration of Order Dismissing Petition for Order to Show Cause and for Writ of Habeas Corpus:

"That the Attorney General abused his discretion and acted arbitrarily in the re-arrest of Relator on October 23, 1950."

Dated November 9, 1950.

ALBERT E. BADDIN,
Attorney for Relator.
HOWARD H. GELB,
Attorney for respondent.

31 United States District Court, District of Minnesota, Fifth Division

[Title omitted]

MEMORANDUM ORDER—November 17, 1950

Relator filed a petition for a writ of habeas corpus. The matter came on for hearing at Duluth on an order to show cause. Relator was unsuccessful on the showing made. He subsequently applied to the Court for a rehearing, and requested that he be heard in the matter by a three-judge Court.

At the first hearing in Duluth, relator did not testify, and submitted no affirmative proof. At the second hearing, before a three-judge Court in St. Paul, relator testified in his own behalf, in addition to calling respondent for cross-examination under the Rules.

32 It is undisputed that relator is a resident of the City of Superior, Douglas County, Wisconsin; that he is 60 years of age; that he is married but does not reside with his family at the present time; that a warrant of arrest was issued for the apprehension of relator and he was arrested pursuant to said warrant in New York City, New York, on or about November 21, 1949; that relator was subsequently released under bail of $5,000 on or about eight days after his arrest; that on or about October 23, 1950, relator was re-arrested and taken into custody under and by virtue of the authority of the United States of America, as he was informed and believed, and is now in actual custody in the St. Louis County jail in Duluth, Minnesota; that deportation proceedings have been instituted against relator; that said proceedings, according to the information and belief of relator, have been brought under the Act of October 16, 1918, as amended, or other provisions of the Immigration Laws of the United States.

That hearings in said deportation proceedings have neither been held nor completed and no findings of fact or conclusions of law have been proposed by any hearing examiner or other officer under authority of any statute of the United States; that until his recent re-arrest on or about October 23, 1950, in Superior, Wisconsin, relator was at liberty on bail in the amount of $5,000, as heretofore stated.

That the arrest made on October 23, 1950, was under and by virtue of the original warrant issued and filed pursuant to orders of the United States Attorney General, and communicated to respondent by telegram, following which the warrant was forwarded to Duluth.

33 The warrant recites that relator has been found in the United States in violation of the Immigration Laws; that he

is "an alien who is a member of an organization, association, society and group that advises, advocates, and teaches the overthrow, by force and violence, of the Government of the United States; * * * that * * * at the time of entry, and after entry [he was] an alien who is a member of an organization, association, society and group that writes, circulates, distributes, prints, publishes and displays * * * written and printed matter advising, advocating and teaching the overthrow, by force and violence, of the Government of the United States." He admits membership in the Communist Party from 1923 to 1930.

Relator was arrested and his bail cancelled under Section 23(a) of the so-called Internal Security Act of 1950, which, among other things, provides:

> "Pending final determination of the deportability of any alien taken into custody under warrant of the Attorney General, such alien may, in the discretion of the Attorney General (1) be continued in custody; or (2) be released under bond in the amount of not less than $500, with security approved by the Attorney General; or (3) be released on conditional parole."

At the second hearing relator testified that he attended the University of Finland in 1910. That he immigrated to Canada and became a citizen of that country in 1913, locating at Fort William, Ontario. In September or October, 1916, he entered the United States and went to the State of Washingon. He filed an application for United States citizenship, but never became a citizen.
34 He lost his Canadian citizenship by absence from that country. He describes himself as "a man without a country." However, he had no difficulty in returning to the Soviet Union in 1932, and remained there for three years holding a responsible position with that government. He then returned to the United States and he has been in various parts of the country since that time. During this time he spent eight years in New York City doing work for a newspaper which was edited on the fourth floor of the building owned by the Communist Party at 50 East 13th Street. Relator is a member of the International Workers' Order. His wife was also a member of the Communist Party, but relator says she was expelled, and he explains that this led to his going to the Soviet Union in 1932.

Traveling to and from the Soviet Union, he went by ship without the aid of the State Department. Presumably he traveled by transport approved by the Soviet Union. He denies being unfriendly to the United States, but he would oppose invasion of Soviet territry while he would willingly support an invasion of Spain.

At the time of his arrest on October 23, 1950, he was associate editor of Tyomies-Eteenpain, a Finnish language newspaper pub-

lished at Superior, Wisconsin. He said he is paid $60 per week for this work. He has no record of arrest for crime.

The foregoing will suffice to point out that relator is an alien who for eight years has received intensive training under auspices of the Communist Party at its headquarters in New York City.

Relator contends:

35 (1) The Internal Security Act is unconstitutional:

(2) The arrest of relator was illegal, unlawful and made without a valid warrant, as the original warrant of arrest was no longer of any legal effect; and

(3) The Attorney General abused his discretion.

At the outset, we hold the Internal Security Act constitutional and applicable. We further hold that the arrest herein was made by virtue of a valid warrant. We are not impressed with the argument of counsel that the warrant was spent and no longer in legal effect. In our opinion it was good for the use to which it was put in taking relator into custody.

We have given thoughtful consideration to the third point made by relator, wherein he contends that the Attorney General of the United States abused discretion vested in him by cancelling bail and placing relator under restrain. The Attorney General, with Section 2 of the Internal Security Act in mind, and the knowledge of relator's close association with organizations and persons considered by him to be engaged in subversive activities aimed at undermining the Government of the United States, was, no doubt, actuated to detain relator with a view to the safety and well-being of our Government and its people. Certainly he had authority to do this, even before the Internal Security Act became law, and the record herein amply supports and sustains the action taken by the Attorney General.

We are not so naive as to believe that relator's return to the Soviet Union in 1932 and his employment there for three
36 years would be countenanced by the Soviet Government unless relator was a member of an organization or society considered subversive by the Attorney General. In other words, relator, by denying membership in the Communist Party during the three years he was last in the Soviet States, demonstrates to us that he is withholding to some extent at least, the truth in the foregoing respect.

Has the Attorney General abused his discretion? In answer to this we quote Chief Judge Nordbye in No. 3517 Civil, Fourth Division, Minnesota, Peter John Warhol, Petitioner, v. Irvin P. Shrode, Officer in Charge, Immigration and Naturalization Service, Department of Justice, St. Paul; The Honorable J. Howard McGrath, Attorney General of the United States; and all other persons and

deputies having custody of Peter John Warhol, Respondents [October 30, 1950]:

"The portion of Section 23(a) above quoted amends Section 156 of 8 U.S.C.A., and the significant change in the portion referred to is that, by reason of the language used, Congress unequivocally has vested discretion in the Attorney General to take an alien into custody on a deportation warrant and continue such alien in custody, release him on bond of not less than $500, or release him on conditional parole. The weight of authority clearly holds that such discretion was vested in the Attorney General under the provisions of the Act before the 1950 amendment, United States v. District Director of Immigration, 120 F. 2d 763. But the language now employed in the 1950 Act removes any doubt as to the intention of Congress in this regard. However, while recognizing that he does not have an absolute right to bail, the petitioner contends that, having once been released on bail, the Attorney General cannot re-arrest him and hold him without bail in the absence
37 of an affirmative showing by the authorities that such action was within the Attorney General's sound discretion. But I am convinced that petitioner's position in this regard is not sound. Manifestly, the Attorney General is not committed irrevocably to the continuance of bail merely because, in the exercise of his discretion, he has permitted the alien to be at liberty on bond. Many changes in conditions may have arisen since the alien was released on bond. And the Attorney General may have concluded that he was in error in permitting bail in the first instance. If it is recognized that the Attorney General is vested with the discretion to continue the alien in custody or release him on bail, then it must follow that such discretion necessarily encompasses the right not only to release the alien on bail after the Attorney General may have first determined that the alien should be kept in custody, but also the right to re-arrest him and continue him in custody after he had once been released on bail. That petitioner's contention that the respondents should have the burden of affirmatively showing that the Attorney General exercised sound discretion in determining that the alien should be kept in custody after once having been released on bail is not -enable is apparent from the very purposes of the statute. Deportation proceedings are civil, not criminal. Congress has determined that those charged with the enforcement of our deportation laws should be vested with the discretion of determining whether in any particular case the alien should be at large on bail during the pendency of the deportation proceedings. While such authority does not grant an absolute power without review

in case of abuse, the Court cannot override the discretion of the Attorney General in regard to bail except where 'the alien makes a clear and convincing showing that the decision against him was without a reasonable foundation. In absence of such proof, the administrative determination is final.' United States v. District Director of Immigration and Naturalization, 2 Cir., 169 F. 2d 747, 751-52. It must follow, therefore, that the discretion of the Attorney General regarding the necessity of placing this petitioner in custody is final
38 in absence of proof of an abuse of discretion. And, moreover, the burden of establishing such abuse necessarily rests upon the alien. United States v. District Director of Immigration and Naturalization, 169 F. 2d 747."

Relator is an alien. We are here concerned with the enforcement of the Internal Security Act of 1950, and the applicable Immigration Acts. The courts have limited their prerogative to a review for the purpose of determining whether the Attorney General has abused his discretion, exercised in an administrative capacity.

It is timely for Western civilization to hail the unfriendly alien with the challenge, "Who comes there?". As Daniel Webster said of our Government:

> "The last hopes of mankind, therefore, rest with us; and if it should be proclaimed that our example should become an argument against the experiment [of constitutional democracy as we know it] the knell of popular liberty would be sounded throughout the earth."

The order to show cause is discharged and the writ denied, conditioned on proper hearing and determination of the pending deportation proceedings within six months from the date hereof.

Dated this 17th day of November, 1950.

MATTHEW M. JOYCE,
ROBERT C. BELL,
DENNIS F. DONOVAN,
United States District Judges.

39 United States District Court, District of Minnesota, Fifth Division

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

NOTICE IS HEREBY GIVEN, that Knut Einar Heikkinen, the Relator above named, does hereby appeal to the United States Court of

Appeals for the Eighth Circuit from the Memorandum Order entered in this cause on November 17, 1950, discharging the Order to Show Cause and Denying the Writ of Habeas Corpus.

SIDNEY E. KANER,
ALBERT E. BADDIN,
Attorneys for Appellant, Relator.

40 United States District Court, District of Minnesota, Fifth Division

[Title omitted]

ORDER ADMITTING RELATOR ON BAIL PENDING APPEAL—January 15, 1951

The above-entitled matter having come on before the undersigned judges of the above-named Court, in the Courtroom of the Federal Courts Building, St. Paul, Minnesota, on the 12th day of January, 1951, at ten o'clock a.m., on motion by the relator to release him upon bail pending the appeal filed by him in this cause; and the Court having denied said motion following oral argument thereon, and relator subsequently having filed an additional motion to amend said motion of January 12, 1951, and having submitted authorities in connection therewith, and respondent having filed his return to said last-referred-to motion on January 15, 1951,

41 Relator appearing by his attorneys, Carol King of New York, N. Y., and Albert E. Baddin, of Duluth, Minnesota, in support of said motion, and

Respondent appearing by his attorneys, Clarence U. Landrum, United States Attorney for the District of Minnesota, and Howard H. Gelb, Assistant United States Attorney, in opposition thereto; and

The Court having reconsidered its order of January 12, 1951,

IT IS ORDERED that said order of January 12, 1951 be amended, and in conformity therewith, that relator be admitted to bail in the sum of Twenty-five Hundred Dollars ($2500.00) pending appeal of this proceeding to the Court of Appeals for the Eighth Circuit, and that relator be permitted to remain at large, conditioned upon his filing a surety bond in said sum, adequately providing for the diligent prosecution of the appeal herein, and the payment of all costs in connection therewith if the appeal is dismissed or the judgment affirmed, or such other or additional costs as such Court of Appeals may award against relator in any event, said surety bond to be approved by one of the undersigned members of this Court.

The Memorandum attached hereto is hereby made a part hereof.
Dated this 15th day of January, 1951.

MATTHEW M. JOYCE,
DENNIS F. DONOVAN,
United States District Judges.

42 In United States District Court

MEMORANDUM RE BAIL

Pursuant to the practice of this Court, relator originated the hearing in connection with his petition for a writ of habeas corpus on an order to show cause. This was entirely proper. At the first hearing, and before arguments commenced, the Court suggested to counsel for relator that if counsel wished to have relator present an order would be issued to that end. Counsel for relator advised the Court that this was unnecessary. The writ was denied. Relator then petitioned for reconsideration of the matter before a three-judge Court. This was granted, and a full hearing had at St. Paul, Minnesota. Relator called respondent for cross-examination under the Rules. Relator also voluntarily testified in his own behalf, he being present in court at St. Paul for this purpose. The full hearing had at St. Paul was the equivalent of a hearing after the issuance of a writ.

The Court is satisfied that it has discretion to admit relator to bail pending appeal. York ex rel. Davidescu v. Nicolls, etc., 159 F. 2d 147; United States ex rel. Pastau v. Watkins, etc., 164 F. 2d 457.

MATTHEW M. JOYCE,
DENNIS F. DONOVAN,
United States District Judges.

43 United States District Court, District of Minnesota, Fifth Division

[Title omitted]

Transcript of Proceedings of October 30, 1950

Proceedings had in the above-entitled matter before the Honorable Dennis F. Donovan, one of the judges of said court in his court room in the Federal Building, at Duluth, Minnesota, on the 30th day of October, 1950, commencing at 2:00 o'clock, P. M.

APPEARANCES

Present: Messrs. Sidney Kaner and Albert A. Baddin, of Duluth, Minnesota, appearing on behalf of the relator; and

Mr. Howard H. Gelb, Assistant United States Attorney, of St. Paul, Minnesota, appearing on behalf of the respondent.

44 THEREUPON, the following proceedings were duly had:

The COURT: Gentlemen, we have the matter of the United States of America, ex rel. Knut Einar Heikkinen, Relator, vs. Harry Gordon, etc., Respondent. Are you ready to proceed?

Mr. BADDIN: If the Court please, we have just been served with a return in open court by the respondent. We thought we would like to have a few minutes to peruse it, if we may.

The COURT: Very well. You may take such time as may be necessary, gentlemen, for that purpose.

(A brief recess was taken.)

The COURT: Are you ready?

Mr. BADDIN: Yes.

The COURT: You are ready, Mr. Gelb?

Mr. GELB: Yes, Your Honor.

The COURT: You may proceed, gentlemen.

Mr. BADDIN: If the Court please, we note from the return served upon us in open court that the only factual issue that is of importance is whether the relator, the petitioner, is a man of law abiding character. Now, I wonder if we may proceed then just with the law at the beginning, at the outset, and submit the law to the Court and then take up the matter of that narrow issue as to his law abiding character after we have submitted the law to the Court.

45 The COURT: You feel that you have all the factual situation set up in your petition?

Mr. BADDIN: Yes, they seem to admit most of the facts except that they do allege on information they do not know whether he is of law abiding character or not and put us on our proof, so I think if we would submit the law first to the Court, that would take care of a lot of the issues.

The COURT: Very well.

(Oral Argument by Mr. Baddin.)

The COURT: All right, Mr. Gelb.

Mr. GELB: Your Honor, before I proceed to the legal argument, there are a few questions of fact involved here which I would like to dispose of at the outset and then proceed to the legal argument, if there is no objection.

To begin with, counsel for the petitioner has had some question in his mind as to what the basis for the arrest was. I might state that the basis for the arrest was a warrant of arrest entitled "Warrant for Arrest of Alien", issued by the Department of Justice of the United States of America, dated November 10, 1949. The

Immigration and Naturalization officer advises me that this is part of their file and they would prefer not to have it impounded by the Court. Consequently, by agreement with counsel on the other side, we have decided to present this without formally admitting it in evidence so that it can be returned to the Immigration and
46 Naturalization officer.

The COURT: Can't you read it into the record?

Mr. GELB: Yes, I could do that. If there is no objection by counsel, I will read this into the record.

Mr. BADDIN: No objection.

Mr. GELB: It reads as follows:

"WARRANT

"For Arrest of Alien,

"United States of America,

Department of Justice,

Washington

"To District Director of Immigration and Naturalization, New York, New York,

Or to any Immigrant Inspector in the service of the United States.

"WHEREAS, from evidence submitted to me, it appears that the alien

Knut Einar Heikkinen

who entered this country at an unknown port subsequent to 1935 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: The Immigration Act of May 26, 1924, in that, at the time of entry, he was an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder; the Act of October 16, 1918, as amended, in that he was, at the time of entry, and after entry, a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, and group that advises, advocates, and teaches the overthrow, by force and violence of the Government of the United States, and the Act of October 16, 1918, as amended, in that he was, at the time of entry, and after entry, a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, and group that writes, circulates, distributes, prints, publishes, and displays any written

and printed matter advising, advocating and teaching the
47 overthrow, by force and violence, of the Government of the United States.

"I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1950." Authority has been granted for release under bond in the sum of $10,000.

"For so doing this shall be your sufficient warrant.

"Witness my hand and seal this 10th day of November, 1949.

"[S.] W. F. KELLY,
Assistant Commissioner,
Enforcement Division."

Mr. GELB: Do you want the reverse side of this at all? I don't know that it is material.

Mr. KANER: We have no objection to whatever you wish to read.

Mr. GELB: That is all I believe is material, the warrant of arrest. I should like to point out—I know it was rather hard to follow it when I was reading it—that there were three bases on which the original warrant of arrest was issued. One was unlawful entry; second, membership in a class that advocates and teaches the overthrow of the United States Government by force and violence; third, membership in a class that prints, publishes, distributes material that advocates the overthrow by force and violence of the United States Government.

48 Did you have some question with regard to that warrant?

Mr. KANER: We wondered if you might follow through on this point, as you indicated, of putting Mr. Gordon on the stand so that we can at this point and without taking more time develop by what authority Mr. Heikkinen is now being held?

Mr. GELB: Surely.

At this point, then, I would like to call Mr. Gordon to the stand.

Whereupon HARRY GORDON having been called as a witness was duly sworn and testified as follows:

Direct examination.

By Mr. GELB:

Q. Will you state your name, please?
A. My name is Harry Gordon.
Q. And your occupation?

A. I am the officer in charge of the Immigration and Naturalization Service, in the Department of Justice, in charge of the Duluth-Superior area.

Q. Are you acquainted or have you ever had any dealings with Knut Einar Heikkinen?

A. Yes.

Q. And will you state briefly what relationship, if any, you have had with him?

A. I took him into custody at Superior, Wisconsin, on the
49 evening of October 23, 1950.

Q. And in what capacity did you take him into custody?

A. As an acting immigrant inspector.

Q. And by what authority, if any, did you take him into custody?

A. By authority of the Attorney General of the United States.

Q. And how did you receive that authority?

A. I received that authority by telephone and also by wire.

Q. I see.

Mr. GELB: Do you want the introduction of the copy of that wire?

Mr. BADDIN: I think it might be advisable.

(Respondent's Exhibit A marked for identification.)

By Mr. GELB:

Q. I show you Respondent's Exhibit A and ask you whether you can identify it? Just say 'yes' or 'no'.

A. Yes.

Q. And without going into detail, will you state briefly what it is?

A. It is a copy of a telegram which was forwarded by our central office in Washington, D. C. to us.

Q. Was it sent to you, then? Or, rather, did you receive it?

A. I received this.

Q. Yes. And is that a true copy? Have you compared this with the original telegram that you received and can you tell me
50 whether it is a true copy of it,—that is, of the one that you received?

A. No, I haven't received this one. This is the copy of the telegram that was sent, but I haven't received the original.

Q. Well, is this the document that you received?

A. This is the document I received, yes.

Q. Very well. And is that a document that you keep in the ordinary course of business reflecting the activities that you handle?

A. I do.

Mr. GELB: I offer in evidence Respondent's Exhibit A.

(Exhibit handed to Mr. Kaner.)

Mr. KANER: Well, if the Court please, this copy of a telegram purports to refer to another telegram, dated October 21, 1950, and without seeing that telegram, or having that also offered, we can't tell whether this is pertinent in this case at all.

The COURT: Is it consistent with your Paragraph VI of your petition?

Mr. KANER: No, I don't think it is, Your Honor.

The COURT: Paragraph 6 is as follows:

"On information and belief, the only claim and sole authority, by virtue of which the respondent so restrains and detains
51 your petitioner, is instructions from the Attorney General of the United States."

Mr. KANER: In order to be able to determine, Your Honor, whether or not that is in conformity with paragraph 6, we would have to see some sort of wire that refers to Mr. Heikkinen.

The COURT: Well, I think the return admits paragraph 6 to be correct. No, you haven't included that, Mr. Gelb.

Mr. GELB: Well, we do admit it. Here is what we say, Your Honor: We say,

"Answering Paragraph VI of the Petition for Writ of Habeas Corpus alleges that petitioner is restrained by authority of the Attorney General of the United States."

The COURT: It amounts to the same thing.

Mr. GELB: Just about. The only thing is we took exception to the word "sole" because we felt that it might be ambiguous. We felt that there was also statutory authority in addition to that of the Attorney General. Perhaps it was by way of being overly cautious, but otherwise it is certainly an admission that there was authority from the Attorney General.

The COURT: (To the witness) Well, Mr. Gordon, did you receive this Exhibit A in the regular course of mail?

The WITNESS: I did.

The COURT: From the Department of Justice in Washington?

52 The WITNESS: Through official channels, yes.

The COURT: Well, how would it come to you?

The WITNESS: Well, all mail——

The COURT: It came through the mail?

The WITNESS: All mail that is received by our service comes through official channels. That is from the Attorney General to the District Director of Immigration at Chicago, and then from the District Director to us.

The COURT: Well, then, you know this came from the Attorney General?

The WITNESS: Yes, I do.

The COURT: Is there any question about it, Mr. Kaner?

Mr. KANER: I wonder if we could ask Mr. Gordon—did you receive also the telegram that is referred to in this exhibit?

The WITNESS: Yes.

Mr. KANER: Do you have a copy of that available?

The WITNESS: Well, that is in a file which was received and which was telephoned to me, that is, the telegram that directed this man's apprehension.

Mr. KANER: In other words, Mr. Heikkinen is nowhere named in this letter which has been offered in evidence. We don't know whether this was——

Mr. GELB: Well, that is something I propose to develop.

53 I can't develop it except after I put this in evidence.

Mr. KANER: Well, we have no objection as such.

The COURT: Received.

(Respondent's Exhibit A reads as follows:)

"United States Department of Justice

"Immigration and Naturalization Service

Chicago 7, Illinois

October 27, 1950 4053

"To: All Officers in Charge, Chicago District (St. Paul, Duluth, Milwaukee, Noyes, International Falls, Portal, Winnipeg, Pigeon River);
District Adjudications Officer, Chicago;
Chief—Investigation & Deportation Section, Chicago; Entry, Departure & Expulsion Section, Chicago; Nationality & Status Section, Chicago.

From: Marcus T. Neelly, District Enforcement Officer, Chicago, Illinois.

Subject: Detention of Aliens under Section 20 of the Immigration Act of 1917, as amended by the Internal Security Act of 1950.

"Central Office telegram of October 24, 1950, is quoted for your information and guidance?

"'By authority of the Attorney General delegated to me by Section 90.1 of Title 8 CFR (12 F.R. 5072, July 31, 1947) under Section 37 of the Alien Registration Act of 1940, 8 U.S.C. 458, you are directed to detain under Section 20 of the Immigration Act of 1917, as Amended by the Internal Security Act of 1950 pending further instructions the aliens you were directed to apprehend by telegram of October 21, 1950, from the Assistant Commissioner, Enforcement Division.'"

"Confidential."

By Mr. GELB:

Q. Now, showing you Respondent's Exhibit A again, I ask you, Mr. Gordon, whether you have the complete record, official
54 record, of the petitioner in your custody?

A. I have.

Q. And I ask you whether you are the official custodian of that record or file?

A. I am.

Q. Now, in that record or file do you have the telegram referred to in this telegram, or in this comunication?

A. I have.

Q. Is there any reason why that telegram cannot be introduced in evidence today?

A. There is.

Q. Will you state what that reason is?

A. The introduction of that telegram would be detrimental to the security of the Republic, because it is confidential.

Q. And will you state or can you state without jeopardizing your status or the confidence which you have why it is confidential?

Q. Because it contains information that might jeopardize the lives and security of other persons, or the security of the United States.

Q. Let me ask you this: Does that telegram contain other names besides that of Mr. Heikkinen?

A. It does.

Q. And is that the reason that you can't present it in court today?

A. That is the principal reason.

Q. Now I ask you—have you examined that record as official custodian of the file, I mean, that telegram?

55 A. I have.

Q. And can you state affirmatively that that telegram contains or gives authority for the arrest of Mr. Heikkinen?

A. It does.

Mr. GELB: Very well. You may cross-examine.

Cross-examination.

By Mr. KANER:

Q. Well, Mr. Gordon, other than the two telegrams which you have referred to, namely, the telegram which has been introduced in evidence as Respondent's Exhibit A and the other telegram which you have just referred to in your answer, did you receive any other instructions with reference to Mr. Hiekkinen, or any other warrants or other legal instruments?

A. None.

Q. So that these two telegrams, then, constitute the authority and the only authority which was given to you to take Mr. Heikkinen into custody?

A. Except the warrant of arrest which has been introduced.

Q. Except this original warrant which has been read into the record by Mr. Gelb, but which has not been offered in evidence. Now we will take the three instruments,—this warrant, which was read in evidence, this copy of a telegram which has been offered and received in evidence as Respondent's Exhibit A, and the other telegram to which you have reference naming Mr. Heikkinen,—

56 has there been any other instrument, warrant or other legal process which you have received on which you base your authority to place him in custody?

A. None.

Mr. KANER: I wonder, if the Court please, if it might not be proper to have this warrant placed in the record with the understanding that the government may remove it at the conclusion of this hearing?

Mr. GELB: We have no objection. Is there any objection, Mr. Gordon, as long as we can remove it?

The WITNESS: No, so long as it is not impounded.

The COURT: That may be understood and the record may so show.

Mr. KANER: I suppose, Mr. Gelb, you would want to offer it as a government's exhibit?

Mr. GELB: Very well, Respondent's Exhibit B, I presume.

(Respondent's Exhibit B marked for identification.)

The COURT: Exhibit B has been offered. There is no objection, Mr. Kaner?

Mr. KANER: No objection.

The COURT: Received.

By Mr. KANER:

Q. Now, Mr. Gordon, showing you this warrant which for identification has been marked Respondent's Exhibit B, I will

57 ask you who W. F. Kelly is, by whom this warrant is signed?

A. Mr. Kelly is the Assistant Commissioner of the Enforcement Division, to whom the Attorney General has delegated authority to issue these warrants under the provisions of the immigration laws.

Q. Well, is Mr. Kelly an official of the office of the Attorney General?

A. He is an official of the Commissioner of Immigration and Naturalization, which has charge of the enforcement of the immigra-

tion laws and to whom the Attorney General has delegated the authority to issue warrants of arrest.

Q. Well, this warrant of arrest, however, is issued by the Immigration Service, isn't it?

A. Yes.

Q. It is a warrant which is on a form—U. S. Department of Justice, Immigration and Naturalization Service?

A. It is.

Q. This is a warrant, then, issued by the Immigration and Naturalization Service?

A. Yes, that is,—issued by the Attorney General, under the authority of the Attorney General of the United States to the Immigration and Naturalization Service.

Q. Well, that, of course, is a conclusion of yours, but——

A. No, it is a fact.

Q. Well, this warrant is one issued over the signature of W. F. Kelly, Assistant Commissioner, Enforcement Division of the
58 Immigration and Naturalization Service, isn't that correct?

A. That is correct.

Q. All right. And it is issued to the District Director of Immigration and Naturalization, New York, New York, or to any Immigrant Inspector in the service of the United States?

A. That is correct.

Q. This is the only warrant, and this warrant was used both for Mr. Heikkinen's arrest at or approximately at the time of its original issuance and at the time that you again took him into custody on October 23, 1950?

A. Yes,—plus the telegraphic instructions.

Q. Well, you had no new warrant of arrest issued by the Attorney General of the United States?

A. No.

Mr. GELB: That is admitted, Your Honor. I don't see the point there.

By Mr. KANER:

Q. Did you receive any instructions from the Attorney General of the United States with reference to Mr. Heikkinen's bond?

A. Without looking at the October 21st telegram, I can't state that definitely.

Q. Why don't you look at the October 21st telegram and then tell us?

(Document handed to witness by Mr. Gelb.)

A. It directs the apprehension immediately and detention
59 pursuant to Section 20 of the 1917 Act, as amended by the Internal Security Act, of Kurt Einar Heikkinen and others.

Q. Is there anything there in that telegram about Mr. Heikkinen's bond?

A. There is nothing about the bond.

Q. Do you have any official communication from the Attorney General with reference to Mr. Heikkinen's bond?

A. Except what is contained in the file.

Q. Well, is there anything contained in the file about his bond?

A. It shows that he was released on the bond.

Q. That is right. He was first arrested on this warrant, which has been offered and received in evidence as Respondent's Exhibit B, and he was thereafter, to your knowledge and as shown by your file, admitted to bail in the sum of $5,000. That is correct, isn't it?

A. That is correct.

Q. Now, is there anything after that that your file shows with reference to that bond?

A. Not that I know of.

Q. Therefore you are not prepared to say to this Court, are you, that this bond has been cancelled?

A. No, I can't say that it has.

Q. So far as you know, this bond is in full force and effect at this moment?

A. Well, wouldn't that be a conclusion of mine?

Q. Well, so far as you know.

A. So far as I know.

Mr. GELB: I object to that. It is not within the province
60 of the witness' knowledge.

By Mr. KANER:

Q. Let me ask you this, then, Mr. Gordon: Have you received a copy of an order of any court of the United States, or a clerk of any court of the United States cancelling Mr. Heikkinen's bond?

A. No, I haven't.

Q. You have not received such. Do you know of any such order having been entered?

A. No, I don't. Courts do not enter such orders in immigration bonds, Mr. Kaner.

Q. Has the Attorney General or anyone who has authority in the immigration proceedings made or entered any order revoking or cancelling Mr. Heikkinen's bond?

A. They may, but I haven't direct knowledge of that.

Q. That is what I am asking you. Do you have knowledge of any such order being made by any person in authority?

A. I have been told that it has, but I don't have that direct information. I have been told that the Attorney General has cancelled the bond, but I do not have any direct information myself. It is probably on file elsewhere.

Q. You don't get this information by hearsay. Don't you get this by direct communication from your superiors?

A. Yes, by telephone, but I haven't got that in the file. You asked me if I had direct evidence myself. I do not have it.

Q. You don't have any direct evidence. Do you have
61 anything to submit to this Court bearing upon the fact question as to whether or not Mr. Heikkinen's bond has in fact been cancelled?

A. Well, I have no written information. I have been informed that there is on file a cancellation but I do not know.

Q. Where on file?

A. Probably in Washington, but I haven't got that here. It may be in our District office. I have been told that it has been cancelled but I haven't the information.

Q. Well, Mr. Heikkinen was arrested on October 23rd, isn't that correct?

A. Yes.

Q. And that is seven days ago?

A. Yes.

Q. And in those seven days you have received nothing indicating the status of his bond?

A. Other than what is in the file.

Q. Well, you have just said that in the file there is nothing?

A. There is nothing in this file.

Q. Showing the status of his bond?

A. No; but sometimes these things are done without being in the file. I have been informed by my District Director in Chicago that the bond was cancelled but I do not have any direct evidence of it.

Q. Well, if this was the warrant of arrest, Mr. Gordon, Respondent's Exhibit B,—if this is the warrant of arrest which you have used to retake Mr. Heikkinen into custody, what is the effect of the statement that is a part of the warrant that "Authority
62 has been granted for release under bond in the sum of $10,000"? Isn't that a part of the warrant?

A. That is discretionary.

Q. But it says so in this warrant?

A. Yes, but officers in charge have authority to retain an alien in custody without bond if necessary, under the laws and regulations of—or under the laws of the United States and the regulations made thereunder.

Q. Well, do you consider that this warrant still carries authority to grant release under bond in the sum of $10,000 or not?

A. It carries authority to release this alien from custody under bond in the sum of $10,000, or the officer in charge who apprehends him may keep him in custody without bond if required,—if he considers such action necessary.

Q. Have you received any instructions or information in that regard?

A. Yes, that is in the immigration regulations.

Q. No, but have you received any instructions from your superiors as to whether or not you should regard this authority to release Heikkinen under bond of $10,000 as still in effect or not.

A. None. That is within my own discretion.

Q. I see. And you are exercising your discretion to refuse him bond in any amount, is that correct?

A. Correct,—in accordance with the instructions of the At-
63 torney General.

Q. Have you received such instructions from the Attorney General to refuse bond in any amount?

A. Well, we have received instructions to apprehend him and place him in custody.

Q. How about bond? Have you received any instructions with reference to bond?

A. I haven't received any instructions. We don't have to have any.

Q. Mr. Heikkinen is in your custody, is he not? You are the officer who has him in custody?

A. Yes.

Mr. KANER: I think that is all.

Redirect examination.

By Mr. GELB:

Q. I would like to ask Mr. Gordon a few more questions. Mr. Gordon, as you will recall, counsel asked you if you have had any information. Now when he said that, he didn't refer only to written information. Have you had any oral information directing you to take Mr. Heikkinen in custody?

A. Yes, I have.

Q. And what was the nature of that oral instruction?

A. That was received from the——

Q. What was the nature of it?

A. The nature of it was a telephonic instruction.

Q. From whom?

A. From the chief of the Investigation Division of the Immigration and Naturalization Service at New York.

64 Q. Is he your superior in the line of command, so to speak?

A. Yes,—indirectly, yes.

Q. And did he give you any instructions verbally as to what you should do relating to a bond?

A. He stated that the Attorney General had directed that this

Knut Einar Heikkinen be taken into custody and detained and that the bond had been cancelled.

Q. Very well. Then you did receive instructions that the bond had been cancelled, is that correct?

A. I did.

Q. And that decision has not been solely a matter of your discretion, or the exercise of your discretion, but it was pursuant to instructions, is that correct?

A. It was.

Q. Very well. Now, counsel asked you about the applicability of that statement about $10,000 bail on the warrant. What was the instruction you received by phone with regard to that statement as to $10,000 bail?

A. I did not receive any. For your information, the immigration regulations in general provide that when a warrant is issued and an alien is taken into custody, he may be released under bond or may be detained if the officer in charge considers it advisable. In this instance I was told that the bond had been cancelled; that I
65 should take this alien into custody.

Q. Very well. Those were your instructions?

A. Those were my instructions.

Mr. GELB: Very well; that is all.

Recross-examination.

By Mr. KANER:

Q. You say you got a telephone call from the Chief of the Immigration and Naturalization Service in New York?

A. From the Chief of the Investigation Division, and this was, by the way, confirmed by authority of the District Director of Immigration at Chicago, who is my immediate superior.

Q. These are all officials of the Immigration and Naturalization Service.

A. They are supervisory officials of the Immigration and Naturalization Service.

Mr. KANER: I think that it all.

Mr. GELB: Very well, that is all.

(Witness excused.)

(Thence followed oral argument by Mr Gelb.)

The COURT: Did you have anything now to say in response?

Mr. KANER: If the Court please, in order to complete the record, probably we should put in some testimony which is available here with reference to paragraph 1, indicating that Mr. Heikkinen is a

law abiding person. It will perhaps only take about five minutes to put that in.

66 The COURT: All right.

Mr. GELB: Well, Your Honor, rather than waste the time of the Court or counsel, why I don't think we will contest the fact. If by that counsel for relator means that he is a law abiding person in that he obeys the laws of the community in his ordinary every day affairs, I don't think we will contest that.

The COURT: Well, if he violates the Internal Security Act, would you say that he was——

Mr. GELB (Interposing): No, I wouldn't. We will concede to this extent that he probably hasn't committed any ordinary crimes under the common law, or probably conducts himself in an ordinary fashion, or something of that kind. We will be willing to concede that.

Mr. KANER: Well, Mr. Gelb, you must have information in your research on him which indicates he has no criminal record?

Mr. GELB: No, I don't, but we are willing to concede that because it is not in issue.

The COURT: Admit that the petitioner, or relator, has no criminal record. Is that satisafctory?

Mr. KANER: Yes.

Mr. GELB: That is satisfactory.

Mr. KANER: If the Court please, I just want to take a very few moments to discuss this matter further.

67 (Further remarks by Mr. Kaner.)

* * * * *

Mr. KANER: Now, coming to the testimony which we have developed here, Mr. Gordon, as I recall his testimony, said that no bail will be admitted here; that Mr. Heikkinen will not be admitted to bail; and that that was based upon instructions which he had received, or his own decision.

The COURT: I didn't understand that, Mr. Kaner.

Mr. KANER: I thought the last few questions I asked him indicated that.

The COURT: You had better ask him again.

(Whereupon, the following further questions were propounded to Mr. Gordon:)

By Mr. KANER:

Q. Let me ask you, Mr. Gordon,—is it your intention in this matter that Mr. Heikkinen shall be admitted to bail?

A. My intention is to retain him and act according to instructions that are issued to me.

Q. But your instructions, so far as you have them now,—are those instructions to the effect that he shall be admitted to bail or that he shall not be admitted to bail?

A. My instructions are to detain him in custody.

Q. And not admit him to bail?

A. To apprehend him and detain him in custody. No mention of bail has been made. The telegram states "pending further in-
68 structions" that has been entered in evidence. Perhaps if we read that telegram,—can I see it, please?

Q. Surely.

(Respondent's Exhibit A handed to the witness.)

A. The telegram reads: "By authority of the Attorney General delegated to me by Section 90.1 of Title 8 CFR"—that is Code of Federal Regulations—"(12 F. R. 5072, July 31, 1947) under Section 37 of the Alien Registration Act of 1940, 8 U.S.C. 458, you are directed to detain under Section 20 of the Immigration Act of 1917, as amended by the Internal Security Act of 1950 pending further instructions the aliens you were directed to apprehend by telegram of October 21, 1950, from the Assistant Commissioner, Enforcement Division." That is what I meant by the statement "pending further instructions." No doubt further instructions will be received.

Q. Well, on the basis of your telephone conversations with anyone above you in the Immigration Service, have you received any indication as to whether or not there is to be bail in this case?

A. Nothing was said about that.

Q. Nothing has been said?

A. This is by authority of our central office; that is from the Attorney General himself.

Q. Now, have you heard anything whatsoever about bail since Mr. Heikkinen's arrest some seven days ago?

A. Not since, except this telegram "pending further in-
69 structions." What the further instructions will be, I do not know.

Q. You do not know at this time?

A. No.

(Thence followed further remarks by Mr. Kaner and discussion between Court and counsel, after which the Court denied relator's petition; and an adjournment was taken at 6:00 p.m.)

70 United States District Court, District of Minnesota, Fifth Division

[Title omitted]

Transcript of Proceedings of Nov. 10 1950

The above-entitled matter came on for hearing before the Honorable Dennis Donovan, Matthew M. Joyce, and Robert C. Bell in a court room in the Federal Courts Building, St. Paul, Minnesota, on the 10th day of November, 1950.

APPEARANCES:

Mr. Howard Gelb, Assistant United States Attorney, appearing on behalf of Harry Gordon, Officer in Charge, Immigration & Naturalization Service, Department of Justice.

Mr. Albert A. Baddin, appearing on behalf of Relator.

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The following is testimony taken during the course of the proceedings:

71 KNUT EINAR HEIKKINEN called as a witness on his own behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. BADDEN:

Q. Your name, please.

A. Knut Einar Heikkinen.

Q. Where did you live prior to your recent rearrest, Mr. Heikkinen?

A. I lived in Superior, Wisconsin, 603 Tower Avenue.

Q. What job did you have there, if any?

A. Associate editor. That means I am in charge of correcting the correspondence that comes from coast to coast. That is a man's job.

Q. You correct the correspondence, you say.

A. And rewrite and put it in a form that can be published.

Q. In what language do you write?

A. In the paper I write in Finnish.

Q. Are you a graduate of any University, of any school of higher learning?

A. I was admitted to the University of Finland in 1910 but didn't finish my courses.

Q. You have some children?

A. Three living.

72 Q. How old are you, Mr. Heikkinen?

A. Sixty.

Q. Have you ever been convicted of any crime of any kind?

A. None whatsoever.

Q. Of any kind?

A. None whatsoever.

Q. How long have you lived in Superior?

A. This time since about the 15th of August.

Q. Of this year?

A. Yes, this year.

Q. Did you ever live in Superior before?

A. I came the first time in 1918 and the second time I came in 1924.

Q. How long did you live in Superior in 1918?

A. Something about fifteen months.

Q. How long did you live there in 1924?

A. Not quite three years.

Q. So you are not new to Superior, are you?

A. No, I have been there several intervals—times. This is the third time.

Q. Were you admitted to bail in November, 1949, in New York City?

A. Yes.

Q. How much bail was put up, do you know?

A. Five thousand dollars. First they asked for ten and then that was reduced to five.

73 Q. Does the warrant specify ten thousand dollars?

Mr. GELB: Yes.

A. Yes, it was specified first ten thousand dollars but it was reduced to five.

Q. What do you do in your work there at the paper, Mr. Heikkinen? Just describe in general what you do.

A. Well, about 7:30 in the morning I go there and I give a little hand in writing general news, something, about a column or a column and a half in the morning rush. When the morning mail comes I start to take care of the correspondence that we get and that takes my whole day then.

Q. How many hours do you work a day there?

A. Oh, sometimes nine, sometimes ten hours, sometimes less. It is long enough.

Q. Do you live alone or live with any family in Superior?

A. I am living alone now.

Q. Since you were released on bail in 1949 that would be about November 29, 1949, is that right? Something like that?

A. I was eight days on Ellis Island. On the eighth day I was released.

Q. You were arrested November 21?

A. 21, yes.

74 Q. Since that time state whether or not you have kept yourself available for any hearings that may take place in your deportation matter.

A. Of course. Any old time if they wanted to. I understood that they had too many cases on hand.

Q. Have you ever been to the Immigration Service in New York during the time you were released on bail?

A. No.

Q. Did they ever call you in there for any purpose?

A. No.

Q. Did you make any attempts to hide yourself during the time you were out on bail?

A. No.

Q. In the paper that you are now associated with does your name appear on the paper?

A. No.

Q. Does your name any place show there that you are an editor?

A. No. The only name is the editor in chief, Mr. George Westela.

Q. Since you have lived in Superior have you held yourself available for any deportation hearings?

A. I have been over there.

Q. Have you been hiding?

A. No.

Q. Were you always available up until your arrest for hearings in the deportation matter?

A. I have not been out except visiting some friends a few hours, a few miles out of the city, that is all.

75 Q. I don't know the answer to this question. How is your health? Are you well or ill? What, in general, is your health?

A. Well, I have nothing to kick about.

Q. Have you gone on any lengthy trips since you have been in Superior?

A. Not any further than the Iron Range.

Q. Do you personally wish to cause any danger to this country? Do you wish to overthrow this Government?

A. Ridiculous.

Q. Answer yes or no.

A. No.

Q. You have daughters living in this country, haven't you?

A. Three of them.

Q. Are they young girls, married or what?

A. Two are married with two children both of them, and one is working in New York.

Q. State the other places where they live.

A. One is in Milwaukee, Wisconsin, and she is a housewife and the other one is in Bumford, Connecticut.

Q. Is one of your daughters in a professional occupation? State what she does.

A. Architectural editor of House and Gardens magazine.

Q. Do you want any harm to come to your daughters as residents of this country? State yes or no.

A. No, of course not.

Q. State whether or not you associate with any people
76 who are criminals or violators of the law.

A. Not so far as I know, anybody.

Q. From any time now into the future wherever you are would you be available for deportation hearings?

A. Of course.

Q. Would you rather have your deportation hearing soon or would you rather delay it?

A. I would like to have a discussion with my attorneys also in New York.

Q. You were represented by some attorneys in New York when you were originally arrested?

A. Yes.

Q. Do you earn very much money? Are you a salaried man or do you share in the profits of the business?

A. I am getting sixty dollars a week.

Q. Do you have any troubles with your eyes?

A. The only thing, they are getting of course weak and I have to use glasses.

Q. Have you ever had any hearings in your deportation matter?

A. Not yet.

Q. Did you ever have any questioning by any investigator or immigrant inspector?

A. Two or three minutes' questioning when I was taken to Ellis Island and they asked me when I came into the country my weight and so on and so forth.

77 Q. As you testified in this exhibit, Government's Exhibit B shows authority had been granted for your release on bond in the sum of ten thousand dollars originally. How did it happen to be five thousand, do you know?

A. It took about eight days for them to find out and they reduced it and the Government agreed to reduce it to five thousand.

Q. Did you have some lawyers represent you on that?

A. Yes, Isador England represented me from New York.

Q. Have you done anything more dangerous in your opinion to the Government, to the United States, than what you may have ever done before and on November 21, 1949?

A. None whatsoever.

Judge JOYCE: I think, Mr. Badden, we will recess until two o'clock.

(Whereupon, at 12:30, the regular noon recess was taken.)

78 Afternoon Session

Judge JOYCE: You may proceed, gentlemen.

KNUT EINAR HEIKKINEN resumed the stand and testified further as follows:

Direct examination.

By Mr. BADDEN:

Q. You are the same Mr. Heikkinen who testified before, the relator, aren't you?
A. Of course.
Q. Mr. Heikkinen, when was the first time that you got any notice of any proposed or purported cancellation of a bond?
A. The official notice I got last night.
Q. Did you get something handed to you, something in writing?
A. Yes, it is in the possession of the jailor now.
Q. You left a copy of such paper?
A. They took it in the jail.
Q. Who gave it to you?
A. This gentleman over there.
Q. The gentleman from the Immigration Service?
A. Yes.
Q. In whose custody you have been today, is that right?
A. Yes.

Q. Is that the first time you ever got the notice in regard
79 to your bond since you were arrested?
A. Yes, that is the official notice.

Mr. BADDEN: I presume you have a copy of it here, do you?
Mr. GELB: Yes.
Mr. BADDEN: I think that is all.

Cross-examination.

By Mr. GELB:

Q. Mr. Heikkinen, you were born in Finland?
A. Yes.
Q. On January 3, 1890, is that correct?
A. Exactly.
Q. Where in Finland were you born?

A. In the city of Tampre.
Q. Of what country are you a citizen now?
A. I think I am a citizen of the world. I am a man without any country.
Q. To the best of your knowledge you don't have any citizenship at present?
A. No, my last visa was Canadian.
Q. How did you become a Canadian citizen?
A. In the regular way by following the regular——
Q. What I mean is, in what year and how many years had you resided and so forth? Apparently you were a naturalized citizen of Canada.
80 A. I think it was toward the end of 1913 or thereabouts.
Q. You became a citizen of Canada?
A. Yes.
Q. When did you leave Finland?
A. 1910.
Q. Did you go direct to Canada at that point?
A. Yes.
Q. Did you reside in Canada for three years before you became a citizen?
A. Yes.
Q. Where did you live in Canada?
A. In Fort William, Ontario.
Q. And apparently in Canada all you had to live in that country was three years before you could get your citizenship?
A. Yes, at that time.
Q. After 1913 when did you enter the United States—first enter the United States?
A. It was 1916. I don't recollect whether it was the last day of September or first day of October.
Q. In 1916.
A. It was in Blaine, the State of Washington.
Q. And from 1913 to 1916 where did you live? Was it in the country of Canada?
A. Yes, in Canada.
Q. Then in 1916 you entered the United States?
81 A. Yes.
Q. And you have never filed a petition for naturalization?
A. Sure.
Q. In the United States?
A. Superior, Wisconsin.
Q. But you have never become a citizen of the United States?
A. No.
Q. Where did you reside from 1916 on?
A. Well, I have been residing almost—well at first I resided in Astoria, Oregon, then in Hanna, Wyoming, and Worcester, Massa-

chusetts. Then in New York Mills, Minnesota, and in Superior, Wisconsin twice. In Chicago. In York.

Q. All right, does that cover your travels from 1916 to the present day?

Mr. BADDEN: If the Court please, I would like to object to some of these questions as being too remote and irrelevant to procedings in this case. My questioning in direct was confined to show this man's character and his activities of recent date. It seems to me that we are going too far afield, too remote from any issue involved in this case.

Judge JOYCE: It goes to his background, doesn't it?

Mr. BADDEN: Yes, but we are going back 30—35 years.

82 Judge JOYCE: May it not show some reason why the Attorney General was prompted to do as he did?

Mr. BADDEN: That I do not know.

Judge JOYCE: I don't either but let's find out. The objection is overruled.

By Mr. GELB:

Q. You were mentioning these various cities you lived in from 1916. Does that cover all of the places that you have lived from 1916 until the present day?

A. No.

Q. What other places did you live?

A. Occasionally I have been in Connecticut and many other places because I have been traveling a lot.

Q. Have you ever been out of the country?

A. Yes.

Q. What year?

A. That was in 1929 I tried to go to Canada to fix up some of my affairs that were in the guardianship. When I entered the country I was put straight in the cage and returned within twenty minutes back to the United States.

Q. Do I understand then that you were expelled from Canada in 1929?

A. Yes.

Q. Weren't you a citizen of Canada at that time?

A. I found out at that time that I had been too long away because in the meantime they had passed a law if you are five years away then you lose your citizenry.

83 Q. You have lost your Canadian citizenship?

A. Yes, I found it out that way.

Q. You mentioned something about a cage. I didn't understand you. You said they sent you back. I didn't understand your

answer. Will you explain what happened when you tried to enter into Canada in 1929?

A. They took me from the train right straight in the cage. I mean the immigration cage. And the next train left back for the United States within twenty minutes and they sent me back. They left me in the possession of the Black Rock immigration officials and I stayed there a few hours and they gave me a ticket to the first division and sent me home.

Q. Did you ever travel out of the country outside of that time in 1929?

A. Do I have to answer that?

Judge JOYCE: Yes.

A. Well, I have but there is no official record about it.

By Mr. GELB:

Q. Well of course we aren't concerned with the official record. I was merely asking you whether you have been. Will you state where you have been out of the country outside of that time in 1929?

A. Well, I have been to Canada and I spent the first winter trapping just north of Nipigon with an old friend of mine in Canada because my family went to pieces and I had to go
84 somewhere else.

Q. Did you go anywhere else besides Canada?

A. Well, I worked myself then through the ships somewhere else too.

Q. Where did you go?

A. Well, I was in the Soviet Union.

Q. How many years were you in the Soviet Union?

A. About three years.

Q. That was around when, 1930?

A. That was—no. If I recollect correctly, 1932—'33—'35.

Q. From 1932 to 1935?

A. Yes.

Q. What city in the Soviet Union did you live in?

A. In Petersavosk.

Q. What was your occupation when you lived in this city?

A. I was taking charge of the transport of a building trust.

Q. You were in charge of the transport of a building trust?

A. Yes.

Q. What did that involve? Is it a manager's job?

A. Well, they were Americans, and in the school in the old country we had the Russian language. I came along a little in the Russian language so I was just taking care of that transport.

Q. How many people were there who worked for you?

85 A. Something about 20 or 30, whatever that was.

Q. 20 or 30 people. How long were you in charge of this transportation section?

A. Well, it is hard to remember now. It might have been something about a year and a half.

Q. This city of Petroskof——

A. Petroskof. Petersovok is the official name, the Karelian name. It is the same place.

Q. That is in Soviet Karelia?

A. Yes.

Q. Where is Karelia geographically?

A. It is adjacent to Finland from Lake Ladoga to the White Sea.

Q. Were you ever a city official of this city?

A. No.

Q. What did you do the other year and a half? You said you were there about three years.

A. I was working as a proof reader in the State publishing house.

Q. Were you ever assigned as an organizer or instructor for the city in connection with the Finnish people in the city?

A. No, but I helped a lot because some five thousand families from America and Canada came over there and they couldn't speak

86 Russian so they came to me and I helped them to make their life a little possible over there because they couldn't speak the language and so on.

Q. These were Americans and Canadians?

A. They were Finns from Canada and America.

Q. You worked with them?

A. Yes, with them.

Q. What did you do, help translate things for them?

A. Yes, and then they had some legal matters and so on, they had all kinds of troubles, you see, and I had to run all the time to try to help them out.

Q. Was that in an official capacity?

A. Inofficial.

Q. Unofficial. I suppose you have a good knowledge of Finnish and Russian, the languages?

A. Well of course I got a university education in Finland so I know Finnish perfectly but not so well Russian but I struggle along, because in the old country we had to plug foreign languages in our high school.

Q. How many foreign languages do you speak?

A. Five.

Q. What are they?

A. Swedish, German, Russian, English, Finnish.

Q. Russian, Finnish, Swedish, German, and English?

A. Yes.

Q. Can you read and write and speak well in all of them?

87 A. Well, it begins to go rusty now already.

Q. What training did you have in this transport, in transport work that qualified you for this type of work? Had you had any training in that?

A. No.

Q. How was it that you happened to be placed in charge of this transport.

A. Because the fact was this, that all these chauffeurs were American Finns. You see we went really in a situation where nothing was before done, somebody had to take charge and start to do something.

Q. Did you have sort of an automotive pool or in other words did you have trucks or cars?

A. Trucks, yes.

Q. How big a fleet of trucks did you have?

A. We had twelve, I think.

Q. And what did you do? Were they bulldozers or hauling trucks or what?

A. Hauling trucks.

Q. What did you do, haul different materials from place to place?

A. Building material from place to place.

Q. The purpose of your transport section was to haul materials to various places that were being built?

A. Yes.

88 Q. Had you ever driven a truck before?

A. No but I had out over here, driven an auto over here.

Q. Had you ever run that type of enterprise before?

A. No.

Q. How do you account for the fact not having had any experience in the automotive business you were placed in charge of this transport section? I mean why did they single you out and place you in charge?

A. One must understand those situations. They don't have people with any experience. They have to break them in some.

Q. How about these American Finnish chauffeurs that you have? Didn't they have some experience?

A. Yes, but they couldn't speak the language.

Q. You were the only one who could speak the language so that you could coordinate their efforts?

A. Yes.

Q. At that time wasn't it a requirement that you be a member of the Communist in order to hold a position of that kind?

A. Not necessary.

Q. But in your particular case I presume you did.

A. No.

Q. You were not a member of the Communist party?

A. No.

89 Q. What prompted you to go to Russia at that particular time?

A. I referred to that my family went to pieces and it happened so that my wife went over there. She was an American citizen and with the kid and I tried to go and patch up if it was possible at all but I didn't succeed in it.

Q. What prompted you to leave Russia in 1935?

A. The same story. She left and then I tried to come back.

Q. What did you do after 1935?

A. I was working in the building industry in New York City and then later on I was again put on the editorial board on the Eteepain, our eastern daily at that time. It doesn't exist now any more.

Q. That was a Finnish newspaper?

A. Yes.

Q. How was that spelled?

A. Eteepain.

Q. How long were you the editor of the Eteepain?

A. I was the associate editor something about eight years and the editor in chief of the paper something about two years and I resigned from that position when I got out from Ellis Island last year because I didn't want to put the paper in a predicament.

Q. Why would you have put the paper in a predicament?

90 A. Well, if the editor of the paper is deported it doesn't sound very good in the business world.

Q. What kind of a paper was this Eteepain?

A. Well, it supported the Progressive party.

Q. Of the United States you mean?

A. Of the United States and the American Labor party. That is part of it.

Q. What was its attitude with respect to the Communist party? Did it have any attitude?

A. We didn't make—no attitude whatsoever. We considered that is everybody's private business where they belong to.

Q. What was the paper's the newspaper's attitude toward Soviet Russia?

A. The same thing. According to our conception, whatever a nation decides to do in their inner affair, it is their business but keep their fingers away from our business.

Q. In other words are you telling me then that the editorial policy of your newspaper steered a neutral course?

A. Yes.

Q. As far as Soviet Russia and the Communist party were concerned?

A. Yes.

Mr. BADEN: What years are you talking about?

Mr. GELB: I presume we are talking about the years from
91 1935 to 1945 approximately. You said you were their associate editor eight years and editor in chief for two years, is that right?

A. Yes.

Mr. GELB: My understanding is about from 1935 to 1945.

Q. What other newspapers have you been the editor of since 1945 or on the editorial staff of?

A. That is the only paper. Since 1935. Now I am the associate editor, have been two months and a half, when our two papers merged.

Q. What is the name of the paper now?

A. Tymies-eteenpeain.

Q. That is the newspaper which you are on the editorial staff of?

A. Just now, yes.

Q. You have worked there two and a half months?

A. Yes.

Q. Before that where did you work?

A. On the Eteepain until it was liquidated or merged with this paper over here in Superior.

Q. Were you on the editorial staff of the Eteepain from 1935 to 1950 or so?

A. Yes.

Q. Then it was about fifteen years?

92 A. Was it that long? You might be right, yes.

Q. Somewhere around there?

A. Yes.

Q. In any event you became editor—you entered the editorial staff of that newspaper from the time you returned from Russia?

A. About a year and a half.

Q. What did you do for a year and a half after?

A. I was building.

Q. A year and a half after you went and you have been in editorial work or newspaper work ever since to the present time?

A. Yes.

Q. The present newspaper and its predecessor, the one that it merged with?

A. Yes.

Q. I presume the editorial policy of both papers is about the same.

A. Yes.

Q. So when we speak of one we might as well speak of the other as far as editorial policy.

A. Yes.

Q. You say with respect to Russia or the Communist party the newspaper was neutral but it supported the progressive party locally in the United States and the American Labor party in New York I presume.

A. Yes, and during the Roosevelt period, the Roosevelt
93 policy.

Q. What happened after the Roosevelt period?

A. What do you mean? I don't understand.

Q. I am sorry I wasn't very clear. Let me restate the question. Before the Russo-German pact with regard to Poland this was after Natzi Germany had started war—or no, I am sorry—this was just before the start of the second World War, you will recall Germany and Russia entered into a non-aggression pact.

A. Yes.

Q. And as I recall—and if I am wrong please correct me—there was a certain demarcation line in which Poland was split, part to go to Russia and part to go to Germany. Isn't that your recollection?

A. Yes.

Q. Before that Russo-German pact what was the policy? What was the editorial policy of your newspaper as to the United States' foreign policy? Was it one of collective security then so-called or was it one of neutrality or isolation?

Mr. BADDEN: I respectfully submit that we are getting too far afield in regard to this man's present status. After all we are dealing now with the Attorney General's discretion and abuse of discretion and here we are going into policies of a newspaper on
94 international questions back many, many years ago which it seems to me is too far remote. Certainly what this man did or what he didn't do may be of some importance but here we are going into the policy of a paper which this man doesn't own himself, he only works for the paper. It is going back, it seems to me, too far afield in regard to the issues of this case.

Judge JOYCE: I think the question is all right so far as I am concerned.

A. I have nothing to conceal about it. The question is this, that I was not the editor in chief of the paper. I was at that time taking care of the correspondence and I really don't recollect just exactly what it was. I should have to read over old copies.

Q. You must recall what your position and what the position of the newspaper was at that time. Do you recall that that was a rather important issue at that time, namely was the United States going to join with all the other European forces to form a sort of

collective security against Natzi aggression or were they going to have a policy of isolation?

A. I must admit that I cannot recollect the details any more because there have been so many swift changes and to recollect some fifteen years back——

Q. All right. Well that wasn't fifteen years ago. The war
95 started in 1939. That was eleven years ago.

A. A lot has happened since that.

Q. Have you ever been a member of the Communist party?

Mr. BADDEN: I will object, if the Court please unless it is confined to some time.

The COURT: He knows better than you do or I do or Mr. Gelb does. I suppose this is a preliminary question and he is going to ask when if he says yes.

Mr. BADDEN: Very well, I will withdraw the objection.

A. If you say that I have to answer——

Judge JOYCE: Yes.

A. Yes.

Q. What years were you a member of the Communist party?

A. From 1923 to 1930.

Q. And in 1930 did you give up your Communist party membership?

A. I got fed up with the inner party factional struggle and I dropped away.

Q. I presume then there were a lot of factions at that time.

A. A lot of it.

Q. Are you referring, for instance, to the fight, let's say, or the factional differences between the Trotskyites and the
96 Stalinists and various other groups within the party?

A. This was definitely—I bet on the wrong horse. I bet on Lovestone and I lost.

Q. Did you bet on Trotsky, was that it?

A. No. Lovestone.

Q. That was a local Communist politician?

A. Yes.

Q. That was in 1930. Since 1930 have you had any activities or participation in Communist affairs?

A. No, not any official. I have gone to some of their affairs to listen but that is about all.

Q. These newspapers on which you have been editor and previously associate editor, would you say that they could be fairly and honestly classified as Communist front newspapers?

A. It is difficult to say. Everyone seems to have a different opinion about what is a Communist front. Sometimes even Roosevelt was called a Communist front.

Q. That is true.

A. It is almost impossible to say what is a Communist front.

Q. What in your opinion would you say?

A. I think according to my conception, this labeling of Communist front is not correct.

97 Q. Will you state why you think it wasn't. In what respects did these newspapers follow a different policy than the Communist party or the Communist organization?

A. Each organization has its own democracies and they decide by the will of the membership.

Q. Was there ever a time when your newspapers differed or clashed with what was then the Communist official policy?

A. Our paper was not a Communist party paper and of course we took differences in many respects.

Q. Can you name a few where you had a different viewpoint than the Communist party at the time?

A. For instance in the election campaigns many local differences. It is hard to recollect years back.

Q. You mean in personalities?

A. In personalities and so on. There are so many things in politics.

Judge JOYCE: Did your paper support Mark Antonio in New York?

The WITNESS: Yes.

Q. Do you recall any difference in policy, aside from personalities, that you took with the Communist party?

A. It is hard to recollect years back.

Q. To your knowledge there were some differences but you can't recall them?

A. I can't recollect them now.

98 Q. I presume that on the recent Korean situation your newspaper had some editorial comment, didn't it.

A. I cannot recollect. Very likely there must have been because I have been so occupied with my own line that I have had very little time to study anything else.

Q. Have you written any articles with respect to the Korean situation?

A. No, I haven't.

Q. Has your newspaper come out with any articles regarding the Korean situation?

A. I think they had some translation from the New York Compass, Max Werner's estimations about the purely military point of view.

Q. How about from an editorial point of view, not just a military assessment? Did the newspaper take sides or present any views as to——

A. (Interposing) As a foreign language newspaper we have been very careful in not putting our fingers in that pie.

Q. Have you come out in support of the American or United Nations position in this Korean crisis?

A. I must admit that I have missed many papers reading because I have been too busy with my own work.

Q. What is the nature of your work at the present time?

A. Well, I have been correcting the workers' correspondence and they are writing from all over the country. We have some 300 different local organizations and when they write it is a
99 cross puzzle sometimes, most of the time to find out what they mean to say.

Q. Is this an organization or just a newspaper?

A. No, it is a newspaper but they are sending in.

Q. Contributions?

A. Contributions about the affairs and what is going on at their place. The organization is in a broad view, a grand entertainment organization.

Q. Are you a member of the International Workers Order?

A. I have a one thousand dollar insurance policy in it.

Q. Weren't you elected to the Executive Committee?

A. Yes.

Q. Of the Finnish language group of the International Workers?

A. Yes. I do belong to it.

Q. And when was that?

A. I cannot recollect back.

Q. Was it around June of 1947?

A. You might be right. I have no record about it.

Q. It is within the last two years, though, isn't that correct?

A. Yes.

Q. You said that you were a member of the Communist party from what years again?

A. 1923 to 1930.

Q. And when you went to Russia in 1932 did you say you
100 were no longer a member of the Communist party at that time?

A. No.

Q. At that time you had already given up your membership?

A. Yes.

Q. Wouldn't it have been helpful for you to be a member of the Communist party when you were in Russia?

Mr. BADDEN: I will object to that, if the Court please. It seems to me that is entirely irrelevant.

Mr. GELB: I will withdraw that question.

By Mr. GELB:

Q. Did you ever visit the national offices of the Communist party in New York City?

A. No, but our paper was in the same building. Wait a minute now. It was eleven years ago. We moved away from there to Yonkers.

Q. Originally your newspaper was in the same building as the Communist party national headquarters?

A. We were on the fourth floor.

Q. Did you visit the national headquarters of the Communist party quite often?

A. You couldn't—you could see them people all the time, you see.

Q. What kind of a building was that? Was that a large office building with many different types of offices or was it mostly labor and liberal groups that were in that building?

A. They have some schools over there and different floors
101 they had some different stuff, different organizations. I don't know what they all had.

Q. All of them, though, were organization of what you might call a liberal or labor group, is that so?

A. Yes.

Q. Yours was among them?

A. Yes.

Q. Your newspaper?

A. We rented one floor of that.

Q. You had rented one floor?

A. Yes.

Q. I suppose the Communist party had another entire floor?

A. From fifth floor up I think they had all.

Q. Did you ever attend any meetings, in Russia in the Comintern building?

A. No, they were all in Moscow.

Q. Never any in the local?

A. No.

Judge JOYCE: How did you know that they were in Moscow?

The WITNESS: They were officially—in the press they were informed about, just open public affair.

By Mr. GELB:

Q. Did you ever attend any schools in Russia?

A. No.

Q. You were never an instructor or an organizer there?

102 A. No, no school was I ever.

Q. Did you hold any type of official position with the Russian Government?

A. No. I considered leadership of those 20—30 men, you see.

Judge JOYCE: Who paid you for the activities you were in then?

The WITNESS: The building trust.

Judge JOYCE: Who operates the official building-trust, is that a Soviet organization?

The WITNESS: All those organizations were owned by the State.

Judge JOYCE: This was in Russia proper?

The WITNESS: It was in Karelia.

Judge JOYCE: Is that in Russia or is that in Finland?

The WITNESS: That belongs to Russia but it is an autolymous republic.

Judge DONOVAN: Is that the land Russia took from the Finns?

The WITNESS: No, that has belonged always to Russia, what they call Eastern Karelia. What they took was from Western Karelia.

Judge JOYCE: Were the officials of this so-called building trust Russian?

The WITNESS: Some of them were Russian, some of them
103 were Karelians.

Judge JOYCE: Were the Karelians—is that a part of Russia?

The WITNESS: Yes.

Judge JOYCE: Do the Soviets control and operate and permeate the life and business affairs of that area?

The WITNESS: Of course.

Judge JOYCE: So you did work, then, under Russian supervision.

The WITNESS: Of course.

Judge JOYCE: That supervision was Communistic, was it not?

The WITNESS: Of course it is over there.

Judge JOYCE: It was then?

The WITNESS: Yes.

Judge JOYCE: And you knew it.

The WITNESS: Well I knew it, yes.

By Mr. GELB:

Q. At one time or another you were on the editorial staff of the Canadian Finnish paper known as Vapaus?

A. No, I was on the Tyokansa. That was published in Port Arthur, Ontario, but it went bankrupt during the First World War.

Q. Were you ever an editor of the paper known as Tovari?
104 A. Yes, I was, Astoria, Oregon.

Q. What type of newspaper was that?

A. It was our third. When it existed it was during a period of—a socialist period. It was a socialist paper.

Q. It was a paper of the Finnish Workers Federation, isn't that right?

A. Yes.

Q. When you left the United States for Russia did you obtain a visa or passport from the State Department?

A. I went my own way.

Q. How did you return?

A. The same way.

Q. You returned the same way.

A. Yes.

Q. In other words, I take it that you did not obtain official passports to come in or to go out of the country.

A. Yes.

Q. I presume then that you also got passports of someone else, in other words.

A. No, I worked myself on the ships from Canada and back.

Q. But in both cases it was not an ordinary or legal form of entry or exist.

A. No.

Judge DONOVAN: What was your thought in avoiding the necessary papers from the State Department and going to Russia from the United States?

The WITNESS: The first thing I was not a citizen and I
105 was sure that I would not get it.

Judge JOYCE: What did you want to go back to Russia for?

The WITNESS: My wife went over there and I tried to go and patch up our family live, it was going to pieces. I wanted to try to patch it up but I didn't succeed.

By Mr. GELB:

Q. I presume your wife was an active member of the Communist party.

A. She was expelled from there.

Q. She was expelled from the Communist party. Were you ever expelled from the Communist party?

A. No, I broke away.

Q. By inactivity?

A. Yes.

Q. Did you belong to any organizations outside of your work when you were in Soviet Russia? Did you belong to any organizations of any kind at that time?

A. Everyone over there had to belong to the Union.

Q. How about your wife? Was she still a member of the Communist party at that time or had she been expelled already?

A. She had been expelled long before.

Q. Was she still allowed to go to Russia notwithstanding that fact?

A. Of course. Common workers went over there, they didn't pay any attention to that at that time.

Q. Do you know whether in your particular area in Karelia
106 the Soviet Government was conducting any classes or had any groups for the purpose of disseminating Communist propaganda in other countries?

A. Not that I know.

Q. I take it you were never in that kind of a group.

A. No.

Q. Did you ever have any contact with their secret police at that time, the O. G. P. U.?

A. No.

Q. You never met any of them?

A. You couldn't avoid meeting them on the street and saying hello. That is about all.

Q. Did you have any more contact with them than that?

A. No, because they kept a very strict isolation.

Q. What prompted you to return to the United States in 1935?

A. Again my family affairs.

Q. Your wife at that point left back for the United States?

A. Yes.

Q. Did you live with your family between 1932 and 1935?

A. Yes, we tried to.

Q. Is your wife living in the United States now?

A. Oh yes.

Q. And your children?

A. Oh yes.

Q. But they are not living with you?

107 A. No, they are all already scattered and they have their own families and they have their own troubles and they have to look after them.

Q. You haven't lived with them for some time, I presume.

A. Not for fifteen years.

Q. Apart from any organizations that you may or may not have belonged to, what is your own personal belief and feeling as to the views of the Communist party? Do you subscribe to them or what generally is your viewpoint?

A. Well, when I don't belong to an organization I don't worry about it.

Q. Do you subscribe to the theory that this Government should be run by a proletarian government of the nature of the Soviet union?

A. According to my conception, every nation has its own background. We have established a system over here that the majority decides and whatever the majority decides is law for me. That is my conception.

Q. I appreciate that it is the law for you because whether you want it or not it has to be the law, but what is your viewpoint? Do you believe that our present Government doesn't provide adequate

benefits to the average man? Do you believe, let's say, the common man should be given a greater economic voice or voice in economic affairs?

Mr. BADDEN: I think that is entirely irrelevant. I think
108 there is quite a room for opinion on the subject which would not be prohibited. I think labor unions and other people who are lawfully engaged in all kinds of activities advocate a larger share for the common working man. I don't see how that is relevant to these proceedings to show that this man is dangerous or that the Attorney General did or did not abuse his discretion.

Mr. GELB: Your Honor, I merely want to draw out or elicit from this Petitioner what his viewpoints are. This was merely one approach to it. If counsel objects to it I can rephrase my objection and perhaps be a little more direct.

Mr. BADDEN: What would your answer be to that question?

Mr. GELB: That is beside the point. I am not on the witness stand. If the Court feels that that is too broad a question I can narrow it down.

Judge JOYCE: All right, suppose you do that.

By Mr. GELB:

Q. Mr. Heikkinen, do you believe in the forcible overthrow of the Government of the United States?

A. No, I never have advocated that either.

Q. Do you believe that regardless of the type of Government as long as there is a democratic form that that is the form that it should be kept in?

A. Yes.

Q. Was that your view when you were a member of the
109 Communist party?

A. Of course. It has been always and when I did belong to the Party I never saw any utterance or any statement to the contrary.

Q. Is it your opinion that the Communist party now and before has never advocated the forcible overthrow of the Government?

A. Not when I was over there or not in the documents I have seen. If they have published something else I haven't seen or read that is a different story but what I have seen I don't recollect seeing anything about any forcible overthrow about anything.

Q. You have read Communist literature?

A. Some of it but not all.

Q. You mean to say in reading the Communist literature you have never read of a policy of advocating the forcible overthrow of a capitalist society and its being supplanted by a dictatorship of the proletariat?

A. So far as I can recollect they have stated that you cannot

beforehand decide what turn history takes. In a struggle it does not depend on one side only what is going to happen. There are always two sides.

Q. I see. Let me put it this way. In the event that an overthrow by violence becomes a necessity, then would you advocate or did you advocate it?

110 A. I never advocated it.

Judge JOYCE: You said a little while ago that where we had adopted the rule of a majority, that was good enough for you.

The WITNESS: Yes.

Judge JOYCE: Do you believe in that, that the rule of the majority should control?

The WITNESS: Of course I do.

Judge JOYCE: That isn't so in Russia, is it? There are a few thousand Communists that run 200,000,000 people, aren't there?

The WITNESS: At that time when they had elections it was the majority that decided.

Judge JOYCE: The majority of the Russian people only had one opportunity to vote and that was a ticket that was stuck under their nose, wasn't it, and they had no choice of candidates?

The WITNESS: At our place of work they placed a candidate right straight from the ranks of that place where we were working and everyone selected and voted for those candidates and discarded those they didn't like.

Judge JOYCE: Are you familiar with the Socialist Workers party?

The WITNESS: No I am not.

Judge JOYCE: You have never read any of their literature?

111 The WITNESS: No, I haven't.

Judge JOYCE: You don't know anything about them?

The WITNESS: No I don't.

Judge JOYCE: Do you know that they have followed the Trotsky so-called line of thought?

The WITNESS: Oh you mean Trotskyites. I haven't met any of those people. It must be at least some twenty-five years since I met any of them.

Judge JOYCE: Don't you know that it isn't twenty-five years since they were operating with great strength in the City of Minneapolis?

The WITNESS: I was not over here.

Judge JOYCE: You didn't hear about it?

The WITNESS: I did hear about them. I saw they had some court case and so on but I was away from here. I read it only from the papers.

Judge JOYCE: Did you read that members of that organization were in Mexico City guarding and defending Trotsky?

The WITNESS: No.
Judge JOYCE: You don't know anything about that.

By Mr. GELB:

Q. It is your impression then that the Communist party has never advocated a forcible overthrow.

112 A. Not so far as I have seen but I have read, you see, but there might be something that I have not read and I haven't gotten ahold of.

Q. What is your present opinion as to the United States foreign policy with respect to Karelia?

A. Well, I have seen that even the Republicans have criticized it.

Q. What is your own viewpoint?

A. My own viewpoint is that every nation should be left by themselves to decide their own affairs.

Q. Then you think that our operation is intervention, unnecessary intervention?

A. We are playing with a tremendous—according to my opinion, that is my private opinion, we are playing with a big fire and there are all chances to have our fingers burned over there because there are a billion and a half Asiatics, they are in motion, and it is a dangerous spot to butt in. That is my opinion.

Q. What would your attitude be, let's say, if the United States were invaded by Russia?

A. I would defend.

Q. Whom?

A. United States, of course, because they have no business over here.

Q. Suppose it were not an invasion. Suppose it were, let's say, in Germany. The United States and Russia became em-

113 broiled in a conflict. Which side would you take?

A. Beforehand it is impossible to say. It depends entirely what each side does. To have a preconception about something would not be correct.

Q. That is, you reserve your opinion until such occurs?

A. Yes, I would see what each side is doing.

Judge JOYCE: If you were called upon to bear arms and it came about that the United States had taken up arms against Russia and were contemplating going into Russian territory so to do, what would be your attitude then?

The WITNESS: If they would attack us——

Judge JOYCE: No, I am talking about the United States going into Russia, whatever may be the causes, and you were called upon to bear arms.

The WITNESS: I don't think anybody would ask me at this age any more to bear arms.

Judge JOYCE: They probably wouldn't at your age, being sixty, but what would be your attitude? Do you think that would be wrong or would you be in support?

The WITNESS: I would take a day or two at least to think it over.

Judge DONOVAN: You have had several weeks to think it over in Duluth now. Haven't you given it a great deal of thought?

The WITNESS: No, I have been thinking about just why
114 I was kept over there.

Judge DONOVAN: If the United States found it necessary in its good judgment to protect the Germans in West Germany against the onslaught of the Russians and you were asked to go over there in whatever capacity it may be, whether you were sixty or seventy years of age, would would be your attitude?

A. If they would attack of course anyone who attacks has to be repelled.

Judge DONOVAN: I am talking about the United States attacking now. If the president of the United States, we will assume, with the assistance of Congress, found it necessary to attack Russia first, what would be your attitude in the way of supporting the United States or supporting Russia?

The WITNESS: I can't make, all of a sudden, a decision. I have to think it over.

Judge DONOVAN: I haven't any right to think it over as a citizen of the United States. You are an alien here, a guest of the United States. You would be a friend or an enemy of the United States. Would you assist Russia or would you assist the United States?

The WITNESS: Well, when I am in the United States or in any country if I think that I am going to stay over there I will of course defend that country, no question about that, but when my status is as it is I don't know where I belong to, who knows what I am going to find myself in?

115 Judge DONOVAN: You said you are a man without a country.

The WITNESS: Yes.

Judge DONOVAN: What can the United States expect you to do as an alien here? You may support Russia against the United States?

The WITNESS: As long as I am in the United States I am duty bound to live up to the requirements of the country I am living in.

Judge DONOVAN: Then if the United States declared war on Russian and decided that it should invade Russia, you would support the United States, is that your answer?

The WITNESS: I could not do any other way.

By Mr. GELB:

Q. Let me understand. Is it your position then that if the United States invaded Russia—first let me ask this, you recognize that it is a distinct possibility—we are not speaking in remote conceptions now—it is a distinct possibility you will admit that there might be a war between Russia and the United States, isn't that true? Whether we want it or not it is a possibility, isn't that so?

A. Well if I can do anything I at least would do my best to prevent it.

Q. I am sure we all would but you recognize it is a possi-
116 bility, isn't that so?

A. Well of course it might be. It might happen.

Q. And I don't think it is a remote possibility, is it? Do you think it is a remote possibility?

A. Well I think the United States is thinking twice over before doing it.

Q. I realize that. I imagine everyone would think twice before, but it is a possibility and not a remote one. I think you will grant that.

A. Every reality has to be met when it comes.

Q. All right. Assuming that that reality were in existence today I am asking you not what you would do by reason of necessity—naturally if a man puts a bayonet behind your back and says you will carry a rifle you do so, I am not speaking of that situation. I am speaking of a situation where you are a free agent, where no one puts a rifle or bayonet in your back and says you must do so or you must do so. What would you do in the event the United States invaded Russia, do you know, or can you state?

A. So far as I understand the present situation, either you do or then you go in prison camp. That is the law today with respect of which country we go to.

Q. Yes, I realize that may be a realistic point of view in terms of the expediency of the situation but I am not speaking of expediency, I am speaking of your mental attitude. What
117 would be your mental attitude, not what would be expedient?

A. I wouldn't like that idea.

Q. You mean you wouldn't like the idea of fighting against Russia.

A. No.

Q. Suppose this country were to have a war against, let's say, Argentina. Would you feel the same reluctance?

A. No.

Q. You wouldn't have the same.

A. No.

Q. Or against Franco Spain.

A. No, not the same reluctance.

Q. If, the United States were to invade Franco Spain would there be any question in your mind as to whom you would support in that kind of a conflict?

A. No question whatsoever.

Q. Whom would you support in that conflict?

A. Of course the United States.

Q. And if it were to invade Argentina, whom would you support?

A. Well, I don't know very much about Argentina, it is so remote, but so far as understanding it is more or less a Fascist country and I have no love for it.

Q. Are you aware of the fact that the International Workers Order of which you are a member of the Executive Committee of the Finnish language group, is on a list of the Attorney Gen-
118 eral which is described as a Communist front organization, or aren't you aware of that?

A. I am aware but I don't consider it a correct attitude.

Mr. GELB: If the Court please, I should like to have judicial notice taken of the fact that it is such an organization and is on the proscribed list by the Attorney General as a Communist front organization.

The WITNESS: That case is in the courts now and they are fighting it.

Mr. BADDEN: I think the Court could perhaps take official notice that the Attorney General put it on the list but not that it is actually a proscribed organization.

Mr. GELB: I didn't say that. That it is on that list.

Mr. BADDEN: As a matter of fact, that organization—are you going to go into that further?

Mr. GELB: No.

By Mr. GELB:

Q. Mr. Heikkinen, at the time you left the United States from 1932 to 1935 and returned, did you know that you could get a re-entry permit even as an alien if you had applied to the State Department?

A. I don't think that I could have gotten it.

Q. Why don't you think you could have gotten one?

A. Well, I was not a citizen and that was all the reason for it.

119 Q. During that period wasn't it a common practice for members of the Communist party to travel under assumed or false passports?

A. Might have been. I am not going to deny it. I think very many did it.

Q. Wasn't that your purpose at that time? Didn't you continue

to be a member of the Communist party even after you went to Russia?

A. No.

Q. After you came back?

A. No, since 1930 I was not.

Mr. GELB: That is all.

Redirect examination.

By Mr. BADDEN:

Q. Have you ever or do you now advocate the overthrow or teaching of the overthrow of the United States Government?

A. I do not and I wish anyone to prove it.

Q. Do you hope to spend the rest of your years in this country?

A. If it is possible because it is no pleasure to depart from your own family.

Q. Do you write or have you written any literature advocating or teaching the overthrow of the Government of the United States?

A. Never.

Q. You have not been a member, you say, of the Communist party since 1930, is that correct?

A. No.

120 Q. You belonged to an International Workers Order, is that an insurance organization?

A. Yes.

Q. Is it chartered under the laws of some state of the Union, do you know?

A. Under the laws of the State of New York.

Q. And what do you get if you pass away or if you get sick? Do you get some kind of benefits, is that it?

A. Yes.

Judge JOYCE: Who is the beneficiary of this policy you have?

The WITNESS: My daughter.

By Mr. BADDEN:

Q. Do you have any grandchildren?

A. I have four.

Q. Where do they live?

A. Two in Wisconsin and two in Connecticut.

Q. Were your children born in this country?

A. Two in this country and two in Canada.

Q. And do you love your grandchildren?

A. No question about that.

Q. Would you want any harm to befall them?

A. No.

Mr. BADDEN: I think that is all, Your Honor.

Mr. GELB: Just a few more questions.

Recross-examination.

121 By Mr. GELB:

Q. Mr. Heikkinen, you were arrested originally in 1949 isn't that so?

A. Yes, the 21st of November.

Q. At that time bail was originally set in the amount of ten thousand dollars and then it was reduced to five thousand dollars as you testified, isn't that right?

A. The demand was for ten thousand but it was——

Q. Set at five thousand?

A. Yes.

Q. And you were arrested in New York where you were residing at the time, weren't you?

A. In Yonkers.

Q. And how long ago did you move to Superior?

A. About the 15th of August, thereabouts.

Q. 1950?

A. Yes.

Q. Did you leave word with anyone where you were going to go?

A. I did register officially with the Immigration Department or the Department of Justice.

Q. Where was this?

A. In Superior.

Q. Wisconsin?

A. Yes. I even had to go to the U. S. Marshal and they helped me to get a form from the immigration office in Duluth to get

122 it because the Superior post office didn't have it.

Q. Did you notify anyone in New York at the time you were leaving that you would be in Superior?

A. I informed the Department of Justice over in Washington D. C. That is according to law. And you have to do that within five days.

Q. Did you notify the immigration office in New York?

A. No, in Washington, D. C.

Q. Not in New York?

A. No. In that form was the address where to send it.

Mr. GELB: I have nothing further.

Mr. BADDEN: That is all. We have no further evidence on the part of the Relator, if the Court please.

Judge JOYCE: All right, testimony on behalf of the Relator is closed.

Mr. GELB: Do you rest?

Mr. BADDEN: Yes.

123 IRVIN F. SHRODE called as a witness, being first duly sworn, testified as follows:

Direct examination.

By Mr. GELB:

Q. Your name is Irvin F. Shrode?
A. Yes.
Q. Mr. Shrode, what is your position?
A. Officer in charge of the U. S. Immigration and Naturalization Service, St. Paul.
Q. How long have you been in the immigration and naturalization service?
A. Since February 1927.
Q. That is 23 years, is that right?
A. Approximately.
Q. And I presume you are familiar with the practices and procedures of the immigration and naturalization service.
A. Yes, sir.
Q. You heard the testimony relating to the rearrest of the Petitioner Mr. Heikkinen. Have you ever had similar proceedings? Just answer yes or no.
A. Yes.
Q. Will you state to the best of your knowledge with respect to the practices of the Immigration and Naturalization service in that type of a case where there has been a rearrest and a bond
124 has previously been outstanding, what is the position of the Department as to the effect of the rearrest?
A. That the rearrest automatically sealed the bond.

Mr. BADDEN: I object and move it be stricken. After all this is a question of law, what the law is, not what the opinion of the Department is. The Court must pass on whether such rearrest was legal or not, it seems to me.

Judge JOYCE: I agree with that. I don't see that this man could construe the law.

Mr. GELB: Very well. I will withdraw that.

By Mr. GELB:

Q. Subseqeunt to a rearrest, subsequent to the rearrest in this case, did you send a notification to the sureties cancelling the bond?
A. I did.

(Government's Exhibit D marked for identification.)

Q. I show you Government's Exhibit D and ask you whether or not you can identify it.

A. Government's Exhibit D is a telegraphic notification of the cancellation of the bond.

Q. In the case of——

A. In the case of Knut Einar Heikkinen.

Q. And is that an official record that you keep as a copy of the telegram that you sent to the sureties?

A. Yes.

Q. And this is the official copy?

125 A. Yes, sir.

Q. And it was sent in the regular course of business?

A. It was.

Q. And you are the custodian of this record?

A. Yes, sir.

Mr. GELB: I will offer in evidence Government's Exhibit B.

Mr. BADDEN: May I cross-examine the witness on the copy of this telegram.

Judge JOYCE: You can for purposes of objection but the rules permit that sort of a document to be introduced.

Mr. BADDEN: The only thing is I would like to object to the introduction, as to the effect of this, because it states November 9.

Mr. GELB: I am not arguing the effect.

Mr. BADDEN: No objection to this document as being a notification of the Immigration Naturalization Service.

Judge JOYCE: It will be received.

126 Q. Showing you this document, will you read it.

A. A telegram dated November 9.

Q. That then was your notification to the surety of the cancellation of the bond?

A. Yes, sir.

Mr. GELB: That is all.

Cross-examination.

By Mr. BADDEN:

Q. Mr. Shrode, do you know if a bond instrument was signed when the bai- was put up? Is there a regular bond of some kind that is signed or is money just put up or Government bonds put up in a situation of this kind, particularly in the Heikkinen matter?

A. A bond is executed on Form I 533, I believe, described in the telegram.

Q. The regular signging, then, that he goes through, he signs his name to an instrument, is that correct?

A. The bondsman or the defendant.

Q. But there is some instrument that is signed, there is no question about that, is that right?

A. Yes, sir.
Q. Do you know how that bond reads?
A. Not verbatim. It is conditioned for the delivery of the alien.
Q. Do you have any copies of any bonds with you?
127 A. I believe I have a copy.
Q. Could you get a copy and read it?

Judge JOYCE: What is the materiality of that?
Mr. BADDEN: I want to see what the condition of that bond is.
Judge JOYCE: Whatever it is it has been vacated, hasn't it?
Mr. BADDEN: I withdraw that request, then.

By Mr. BADDEN:

Q. The first communication is the one that you just read from, is that correct, November 9? The telegram is the first communication that you sent notifying the bond was cancelled, is that correct, to Mr. Robert Dunn?
A. That is correct.
Q. That is November 9, 1950?
A. Yes, sir.
Q. So on October 23, 1950, when the rearrest was made, that bond was still in full force and effect, wasn't it?

Mr. GELB: I object to that as calling for a conclusion of the witness.
Judge JOYCE: If he knows I should think he could answer. If he doesn't know he could readily state.

A. The telegram was merely a formal confirmation of the cancellation of the bond.
Q. I mean that is the first communication you made to Mr. Dunn, isn't that correct, the trustee of the bail fund?
128 A. That is right.
Q. Why did you do that on November 9, 1950?
A. Because I was called on the telephone by Mr. Harry Gordon, the officer in charge in Duluth, who had had custody of the file and Mr. Gordon informed me that he had been instructed to formally notify the bonding surety on the bond that the bond had been cancelled and the surety was no longer liable. Mr. Gordon did not have the file in his possession. It was en route in the mai-s to St. Paul and upon its receipt in St. Paul, acting in behalf of the Service, I issued the letter, first the telegram and a letter confirming it stating that the bond was automatically cancelled when the alien was arrested and that the surety was no longer liable.
Q. You claim that you informed them that the alien bond was cancelled upon his rearrest. It doesn't state that in this communication exhibit D, does it?

A. The telegram states that it has been cancelled. The confirmatory letter I am quite sure states——

Q. Who does the cancelling?

A. Cancelled at the time—it was automatically cancelled.

Q. Who cancels it? Who cancels the bond? Who cancelled the bond in this case?

A. I issued the confirmatory order of a formal notice to the surety company that it had been cancelled.

129 Q. Are you the one that is supposed to cancel the bond in this case, in Heikkinen's case?

A. It doesn't matter what officer in the service would cancel the bond.

Q. In this case are you the officer that cancelled the bond?

A. I am the officer who cancelled the bond.

Q. You cancelled it on November 9, 1950, isn't that right?

A. That is a cancellation relieving the surety of liability. Merely a notice relieving the surety of liability, a formal notice.

Mr. BADDEN: That is all.

Redirect examination.

By Mr. GELB:

Q. Since it was elicited on cross-examination, do you happen to have the confirmatory letter with you?

A. I believe it is in your file.

(Government's Exhibit E marked for identification.)

Q. I show you Government's Exhibit E and ask you if you can identify it.

A. Yes, Government's Exhibit E is a letter addressed to Mr. Robert W. Dunn, Trustee and Treasurer of the bail bond—pardon me, bail fund of the Civil Rights Congress of New York 205 East 42 Street, New York, New York.

130 Q. And is that a copy of a letter which you sent to Mr. Dunn?

A. It is.

Q. And is that part of your official records?

Mr. BADDEN: We will admit it is part of the official records.

Mr. GELB: Will you admit he is official custodian?

Mr. BADDEN: Yes.

Mr. GELB: I offer in evidence Government's Exhibit E.

Mr. BADDEN: We have no objection to the introduction of the letter as such but not as to legal effect of the document stating it cancels the bond as of October 23. I believe that is for the Court to determine if it is necessary to determine in this case.

Judge JOYCE: It will be received.

By Mr. BADDEN:

Q. Will you just read this Government's Exhibit E and that is all I have to ask you. Why did you change your wording in the letter from the telegram? Why did you in the second communication state this cancels the bond on October 23 and in the first communication you didn't say anything about what you though would be the correct cancellation date?

A. No reason except perhaps the saving of words by sending a message telegraphically and informing him that they were
131 no longer liable in order to get an expeditious notice. The other letter is a formal type letter.

Q. Of course you don't consider yourself an expert on the law when a bond is cancelled? You just stated that as your own opinion, is that correct? You just stated that?

A. I base that on service policy, service rules, based on my past experience.

Q. Referring to Government's Exhibit D, warrant of arrest, do you know whether or not W. F. Kelly is still the assistant commissioner of the enforcement division?

A. He is.

Q. That is the same W. F. Kelly that issued the only warrant in this case? That is in November, 1949, is that correct?

A. So far as I know it is the only warrant.

Q. He is still in that position?

A. Why yes.

Mr. BADDEN: I believe that is all.

Mr. GELB: That is all.

132 Mr. BADDEN: I would like to call Mr. Gordon as an adverse party, if I may, for cross-examination.

Mr. GELB: If the Court please, do you wish to take him at this time for cross-examination or would you prefer that—I intend to call him on direct.

Mr. BADDEN: I would like to cross-examine now if I may.

HARRY GORDON called as a witness for cross-examination, being first duly sworn, testified as follows:

Cross-examination.

By Mr. BADDEN:

Q. Your name is Harry Gordon, is that correct?

A. It is.

Q. You are the Respondent in this case, is that correct?

A. I am.

Q. What is your official capacity with the Immigration Service?

A. Officer in Charge of the Immigration Naturalization in the Department of Justice at Duluth, Minnesota.

Q. Mr. Gordon, you were in court on October 30, 1950, is that correct?

A. That is right.

Q. You gave certain testimony there that is in the record?

A. Yes.

133 Q. At that time you didn't know, did you, whether the bail or the bail bond of Mr. Heikkinen had been cancelled. You didn't know that when you were asked, did you?

A. I was told that.

Q. But you didn't know of your own knowledge. You say you were told that, is that correct?

A. Yes.

Q. Have you found out, do you think more since that time?

A. Yes.

Q. What have you found out?

A. I have found out what I had been told previously was correct, that the Attorney General held that the taking of this Relator into custody cancelled the bond and also it has been cancelled since.

Q. When has it been cancelled then?

A. It was cancelled yesterday.

Q. The bond was cancelled yesterday.

A. The bond was cancelled when the Relator was taken into custody again when he was—but it was confirmed yesterday.

Q. Have you got anything in your records that would show when the bond was cancelled actually?

A. I haven't got it with me but it is here in court.

Q. When was Mr. Heikkinen first notified about his bond cancellations?

134 A. Well, he was taken into custody and——

Q. When did he receive any kind of formal written notice?

A. He received formal written notice in confirmation yesterday.

Q. You don't know of your own knowledge whether the bond was or was not in full force and effect, do you, on October 30, 1950?

A. Yes, I do.

Q. Do you have any copies of orders or any written evidence in your file directed to the party holding the bond, the Immigration Service that the bond had been cancelled?

A. I was given instructions by our superiors that when this Relator Mr. Heikkinen was taken into custody, that cancelled the bond. I was shown instructions of our superior officers and had been informed that when he would be taken into custody that cancelled the bond.

Q. You were informed that the very act of taking him into cus-

tody would cancel the bond That is what you were informed, is that right?

A. Yes.

Q. Of course you don't know whether that is the legal effect of taking into custody, cancelling of the bond. You wouldn't know, you are not in a position to state that, are you?

A. No.

135 Q. You don't know whether the bond was actually cancelled, do you, on October 23, 1950?

A. Other than the fact that I was informed that by taking him into custody, the act of taking him into custody, cancelled the bond.

Q. Since the last hearing on October 30, 1950, what new knowledge have you got as to the bond. Anything new?

A. Yes.

Q. What have you heard?

A. I was instructed by my superiors that the sureties should be notified in confirmation of the fact that the bond was no longer in effect at the time he was taken into custody.

Q. You mean that you should notify the sureties?

A. Notify the surety that bond was cancelled. In our usual form that is required by regulations.

Q. Did you notify the sureties?

A. I did not, no.

Q. You said that you should notify the sureties, is that right?

A. That we—that is, the Service, should notify the sureties. It doesn't matter whether I do or any other member of the Government does it.

Q. You don't know when the bond was actually cancelled, do you?

A. Yes, I do.

Q. All you know is from hearsay from someone else, is

136 that right?

A. No, I say the actual notification.

Q. Have you got a copy of notification?

A. I haven't got it here but it is available.

Mr. GELB: If the Court please, this may be clarified. I intend to put on Mr. Shrode who has evidence of that.

By Mr. BADDEN:

Q. Mr. Gordon, how do you know of Mr. Heikkinen in the area around Superior and Duluth?

Heikkinen in the area around Superior and Duluth?

A. I know of him by reading some articles which apparently were signed with his initials that appeared in the Eteepain.

Q. Do you read Finnish?

A. No, I saw a translation.

Q. Did you ever see Mr. Heikkinen before his arrest?

A. No.

Q. Do you have any record of whether Mr. Heikkinen was ever convicted of any crimes of any kind?

A. No.

Q. You have no record as to his conviction of any crimes of any kind.

Judge JOYCE: That is stipulated that there is no such.

By Mr. BADDEN:

Q. Do you have any evidence of any kind that shows that
137 Mr. Heikkinen is any type of a bad character?

A. What kind of evidence do you have reference to?

Q. Any kind that shows that he would be a danger to Superior, Wisconsin, where he lives. Have you yourself observed through your own knowledge whether he would be a danger to Wisconsin or not, Superior, Wisconsin, where he lives?

Mr. GELB: I object to this line of questioning unless counsel establishes a little foundation that this witness has a basis for forming any opinion.

Mr. BADDEN: This is cross-examination.

Judge JOYCE: I think the question is too general anyway. Do you mean as an arsonist or something else?

Mr. BADDEN: I will withdraw that question.

Q. Have you visited Mr. Heikkinen since he has been in jail?

A. I have visited with him on the way down from Duluth yesterday on the train.

Q. You only visit him now while he is incarcerated just on your official business, is that correct?

A. Yes, just on the way down on the train we had considerable conversation.

Q. Mr. Gordon, were you one of the arresting officers?

A. Yes.

Q. You went out with others of your office, is that correct?

A. Yes.

138 Q. At the time you rearrested Mr. Heikkinen, did you have that warrant of arrest in your possession?

A. No.

Q. You didn't have it in your possession?

A. No, I was told by Mr. C. H. Pennington, the chief of our investigation section in New York, whose voice I knew because he was formerly associated with me, and he informed me that he had the warrant on file and that he had been instructed to take the alien into custody and that he had learned that he had moved to Superior and we should go there and take him into custody and that the bond was cancelled when he was taken into custody.

Q. When did you first get the warrant? How much after his arrest?

A. I received it on the day of the hearing.

Q. You mean a week later?

A. A week later. It was forwarded by registered mail and there was considerable delay.

Q. It took a week from the time of the arrest until you got the warrant, is that correct?

A. It was forwarded the next day after he was taken into custody. There was delay in transmission because it was registered mail and confidential.

Q. What did you do with that warrant? Did you serve it upon Mr. Heikkinen? You never did serve it on him, did
139 you?

A. No.

Q. You never served any warrant on him even the old warrant, did you?

A. No. It had previously been served.

Q. Yes, but for his arrest now you never served him, did you?

A. No.

Judge JOYCE: Was this a new warrant?

By Mr. BADDEN:

Q. This was the same warrant, wasn't is, that was served November 21, 1949, on Mr. Heikkinen ?

A. Yes.

Q. So you didn't even use that warrant to rearrest Mr. Heikkinen, did you, on October 23, 1950?

A. No. The warrant was on file in New York and had previously been served on him. He knew all about the contents and what it contained, his rights.

Q. But these are just conclusions which you are drawing now that he knew all about the contents.

A. No.

Q. You may state them.

A. They are not conclusions, they are actual evidence.

Q. So therefore what did you have in your possession when you went to rearrest Mr. Heikkinen in Superior October 23, 1950?

A. The long distance telephone instructions from a superior officer of our service in New York.

140 Q. Notwithstanding that, you got the warrant late, you still didn't serve it upon him any more did you, or at any time? It still hasn't been served, has it?

A. It was presented in court October 30.

Q. That is after the hearing, during the hearing, is that right?

A. Yes.

Q. He was never served with the warrant by anybody from your office was he?

A. No, it had previously been served on him.

Q. A year ago, that is right; for the rearrest he was never served with a warrant, is that correct?

A. I don't know what you mean by serving.

Q. You arrest people from time to time with warrants issued by the Department of Justice, is that correct?

A. Yes, well I did not have the warrant.

Q. And you never served him with it after that, did you?

A. And I did not have it in my possession until just before the hearing on October 30. I didn't have anything to serve.

Q. And you never served him with that same original warrant at any time, did you?

A. Not after the hearing on October 30.

Q. You never served him with it at any time, did you, with a warrant?

A. No, I didn't. It was presented in court.

141 Q. It was presented as evidence in court?

A. Within a few hours after I received it.

Q. It was presented in evidence in court as Government's Exhibit B, is that right?

A. Yes.

Q. So then the other exhibits that you had in court are merely communications from higher headquarters, is that correct?

A. I have something additional too if it is desired.

Q. Who was with you at the time you arrested Mr. Heikkinen?

A. An investigator from our office, Mr. Harold A. Wessells and an immigration inspector Mr. Ellis E. Wilson, two of our subordinates.

Q. Did anyone speak with Mr. Heikkinen at the time he was arrested in your presence?

A. Yes.

Q. Did he ask why he was arrested—rearrested?

A. Yes.

Q. What did you tell him? Didn't you tell him it is on the same warrant, on the same thing, the same stuff, old stuff, or something to that effect, some kind of a common term?

A. I told him he was taken into custody under a warrant of arrest which had been previously served on him in New York and that I had been told by my superior officers to take him into

142 custody.

Q. But this arrest therefore—this is the last question I will ask you—this arrest then was made on the old warrant of 1949 which was never served when the rearrest was made and was never served at any time on Mr. Heikkinen after the rearrest, isn't that right? Answer yes or no.

A. Well, no.

Q. As a matter of fact you have no process of any kind under the seal of the Department of Justice which could be construed as a warrant which was ever served upon Mr. Heikkinen on his rearrest.

A. Is not that a negative question?

Q. A negative question is not any worse unless the Court rules against it, than a positive question. You don't have anything under the seal of the Attorney General that could be construed to be a warrant which was ever served upon Mr. Heikkinen on his rearrest?

A. Yes, I have.

Q. What have you got?

A. I have the warrant of arrest which was served on him.

Q. When was it?

A. When it was served originally.

Q. This old warrant, is that right?

A. Yes.

Q. But you didn't have it with you, is that right, at the
143 time of rearrest.

A. I think that was previously testified to.

Mr. BADDEN: That is all.

Direct examination.

By Mr. GELB:

Q. Mr. Gordon, the first information you received was a telephonic communication directing you to apprehend this Petitioner and that the arrest served as a cancellation of bond. I believe that is what you testified to, is that correct?

A. Yes.

Q. And you also testified, as I understand, that the arrest was pursuant to this warrant.

A. Yes.

Q. You also testified that you advised this Petitioner that he was being arrested on this old warrant and so forth?

A. Yes.

Q. Did you advise him of that at the time you apprehended him?

A. At the time we took him into custody, yes.

Q. Subsequent to the time that you received this telephone communication and took him into custody did you receive confirmatory orders?

A. Yes.

Q. What form did the confirmatory order take? In other
144 words, what type of confirmatory order?

A. It was a telegram by authority of the Attorney General confirming that and additionally, a letter from the Service itself in Washington.

Q. This telegram, is that Exhibit B, the one that is on file?
A. Yes.

Judge DONOVAN: Exhibit A, I think.
Mr. GELB: I am sorry, Exhibit A.

Q. That is this exhibit A which I am handing you?
A. Yes.
Q. Showing you Exhibit B is this the warrant of arrest on the basis of which you had this petitioner arrested, Mr. Gordon?
A. Yes.

Judge DONOVAN: That is a photostat of the original.

Q. A photostat of the original.
A. I was present when this photostat was made.

Mr. GELB: I think it is stipulated in the record that the photostat will serve as the original. There is no question on that score.

Q. Mr. Gordon, when did you receive that confirmatory wire?
A. It was received October 30, 1950.
Q. Did you receive any further confirmation subsequent
145 to that?
A. Yes, I had a letter direct from the Acting Commissioner.

(Government's Exhibit C marked for identification.)

Q. I show you Government's Exhibit C and ask you to identify it without stating what it is.
A. This is a letter from Mr. A. R. Mackey, Acting Commissioner of Immigration Naturalization, at Washington, D. C.
Q. To whom is it addressed?
A. It is addressed to Harry Gordon, officer in charge, Duluth, Minnesota.
Q. Is that yourself?
A. That is myself.
Q. Was that a communication received in the regular course of mail?
A. It was. It was received by special delivery in an envelope of the Department of Justice, Immigration Naturalization Service, Washington, D. C.

Mr. GELB: I offer in evidence Government's Exhibit C.
Mr. BADDEN: No objection.
The COURT: It will be received.

146 Q. At the time you took this Petitioner into custody what did you inform him. Will you tell us the details, what you told him?
A. I told him that I had orders to take him into custody under

the warrant of arrest which had previously been served on him and which he acknowledged had been served on him and that to take him into custody.

Q. Did you advise him approximately of the contents or the nature of that warrant or the nature of the charges?

A. I informed him that the charges were contained in the warrant which he knew all about.

Q. Did he acknowledge that he knew?

A. He said he knew all about it.

Mr. GELB: No more questions.

Recross examination.

By Mr. BADDEN:

Q. Do you not understand that Mr. Heikkinen has been in this country about 34 years approximately, more or less? I mean over 30 years, let's say.

A. I have no direct knowledge of that except perhaps what he told me himself. If you wish me to testify about that I will be glad to do it.

Mr. BADDEN: It is admitted, is it not, that he has been in the country since ——

Mr. GELB: No, not continuously.

147 By Mr. BADDEN:

Q. Mr. Gordon, what is the practice of the Immigration Naturalization Service when a case is first started, a warrant of arrest is issued? Usually you do serve the man with a warrant, don't you?

A. The first process is to apply for a warrant and to submit a prima facie case of deportability with the evidence on which that is based and the application. That is submitted either to the proper officer or to a Commissioner of Immigration Naturalization.

Q. But somewhere along the line you usually serve the man with a warrant, don't you?

A. If a warrant is issued it is directed to the officer to take the alien into custody and that is the process.

Q. As a matter of fact, are you familiar with the statute, the immigration statute itself?

A. Yes.

Q. There are certain cases where arrest without warrant are allowed, aren't there?

A. There are.

Q. In certain cases but that is not one of these cases, do you think so, Mr. Gordon?

Mr. GELB: I object, Your Honor.

Mr. BADDEN: I won't ask Mr. Gordon any more questions. I will withdraw that question.

148 RESPONDENT'S EXHIBIT A

October 30, 1950

United States Department of Justice
Immigration and Naturalization Service

Chicago 7, Illinois

October 27, 1950 4053

To: All Officers in charge, Chicago District (St. Paul, Duluth, Milwaukee, Noyes, International Falls, Portal, Winnipeg, Pigeon River).

District Adjudication Officer, Chicago;
Chief—Investigation & Deportation Section, Chicago;

Entry, Departure & Expulsion Section, Chicago

Nationality and Status Section, Chicago

From: Marcus T. Neeley, District Enforcement Officer, Chicago, Illinois.

Subject: Detention of Aliens under Section 20 of the Immigration Act of 1917, as amended by the Internal Security Act of 1950.

Central office telegram of October 24, 1950 is quoted for your information and guidance:

"By authority of the Attorney General delegated to me by Section 90.1 of Title 8 CFR (12 F.R. 5072, July 31, 1947) Under Section 37 of the Alien Registration Act of 1940, 8 USC 458 you are directed to detain under Section 20 of the Immigration Act of 1917 as amended by the Internal Security Act of 1950 Pending further instructions the Aliens you were directed to apprehend by telegram of October 21, 1950 from the Assistant Commissioner, Enforcement Division."

CONFIDENTIAL

149 RESPONDENT'S EXHIBIT B

October 30, 1950

WARRANT

For Arrest of Alien

United States of America
Department of Justice
Washington

0300-218941
No. A-4316699

To: District Director of Immigration and Naturalization, New York, New York

Or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien

Knut Einar Heikkinen

who entered this country at an unknown port subsequent to 1935 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: The Immigration Act of May 26, 1924, in that, at the time of entry, he was an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder; the Act of October 16, 1918, as amended, in that he was, at the time of entry, and after entry, a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, and group that advises, advocates, and teaches the overthrow, by force and violence of the Government of the United States; and the Act of October 16, 1918, as amended, in that he was, at the time of entry, and after entry, a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, and group that writes, circulates, distributes, prints, publishes and displays any written and printed matter advising, advocating and teaching the overthrow, by force and violence, of the Government of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The ex-
150 penses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Im-

migration and Naturalization Service, 1950." Authority has been granted for release under bond in the sum of $10,000.

(Department of Justice,
Immigration & Naturalization
Service Seal.)

For so doing, this shall be your sufficient warrant. Witness my hand and seal this 10th day of November, 1949.

W. F. Kelly,
Assistant Commissioner
Enforcement Division

dmg

151 GOVERNMENT EXHIBIT C

Office Memorandum. United States Government

To: Harry Gordon, Officer in Charge, Duluth, Minnesota

From: A. R. Mackey, Acting Commissioner Central Office

Subject: Knut Einar Heikkinen Your 0900-36448

This will confirm telegraphic instructions heretofore given to you by virtue of the authority of the Attorney General delegated to me by Section 90.1 of Title 8 C.F.R. (12 F.R. 5072 July 21, 1947) under Section 37 of the Alien Registration Act of 1940 8 U.S.C. 458, to apprehend and detain under Section 20 of the Immigration Act of 1917, as amended by the Internal Security Act of 1950, the above named alien, Knut Einar Heikkinen.

152 GOVERNMENT EXHIBIT D

Confirmation of Telegram

U.S. Department of Justice
Immigration and Naturalization Service

Western Union November 9, 1950 A-4 316 699

Robert W. Dunn
Trustee and Treasurer of Bail Fund of
Civil Rights Congress of New York
205 East 42nd Street
New York, New York

Bond dated November 29, 1949 in the amount of $5000.00 executed on Form I-353 conditioned for delivery of Knut Einar Heik-

kinen has been cancelled, and you are, therefore, no longer liable thereunder. Letter of confirmation follows.

Irvin F. Shrode,
Officer in Charge Immigration
and Naturalization Service, St. Paul.

The above is an official copy of telegram sent this day.

Irvin F. Shrode,
Officer in Charge.

153 GOVERNMENT EXHIBIT E

U. S. Department of Justice
Immigration and Naturalization Service

1014 New Post Office Building

Saint Paul 1, Minnesota

Air Mail A-4 316 699

Special Delivery November 9, 1950

Mr. Robert Dunn
Trustee and Treasurer of Bail Fund of
Civil Rights Congress of New York

205 E. 42nd Street
New York, New York

Dear Sir:

You are hereby notified that the bond described below, on which you act as surety, was cancelled by the taking of Knut Einar Heikkinen into custody on October 23, 1950, and you are therefore no longer liable thereunder.

Dated: November 29, 1949; Amount: $5,000.00; Bond Form No.: 1-353; Name of Alien: Knut Einar Heikkinen.

This notification is in confirmation of telegram sent you by me on this date, a copy of which is attached.

Respectfully,

Irvin F. Shrode,
Officer in Charge.

Official copy hereof furnished: Knut Einar Heikkinen.

154 United States District Court, District of Minnesota, Fifth Division

[Title omitted.]

STIPULATION AND DESIGNATION OF CONTENTS OF RECORD—JANUARY 22, 1951

It Is Hereby Stipulated, by and between the parties hereto, through their respective counsel, that the following shall be included in the record on appeal:

1. Petition for Writ of Habeas Corpus.
2. Order to Show Cause, dated October 27, 1950.
3. Respondent's Return to Order to Show Cause.
4. Motion of Relator to Dismiss Return.
5. Affidavit of Relator, dated November 3, 1950, in support of Motion for Reconsideration of Order Dismissing Petition.
6. Motion for Reconsideration of Order Dismissing Petition for Order to Show Cause, and for Writ of Habeas Corpus.

155 7. Notice of Motion for Reconsideration of Order Dismissing Petition.

8. Respondent's Answer to Motion for Reconsideration of Order Dismissing Petition for Order to Show Cause, and for Writ of Habeas Corpus.
9. Order of November 3, 1950 denying Petition.
10. Stipulation, dated November 9, 1950.
11. Memorandum Order of November 17, 1950.
12. Notice of Appeal.
13. Order, dated January 15, 1951, admitting Relator to bail and attached Memorandum.
14. Transcript of proceedings had on October 30, 1950.
15. Transcript of proceedings had on November 10, 1950.
16. Respondent's Exhibit "A", Notice of Detention of Aliens under Internal Security Act of 1950.
17. Respondent's Exhibit "B", Warrant for Arrest of Alien.
18. Government's Exhibit "C", Office Memorandum.
19. Government's Exhibit "D", copy of confirmation of telegram.
20. Respondent's Exhibit "E", Letter (Air Mail, Special Delivery) to Robert W. Dunn from Irvin Schrode.

Dated this 20th day of January, 1951.

Albert E. Baddin,
One of the Attorneys for Relator,

C. U. Landrum and Howard H. Gelb,
Attorneys for Respondent.

Filed: Jan. 22, 1951.

156 And thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Eighth Circuit, to-wit:

(Appearance of Counsel for Appellant)

United States Court of Appeals for the Eighth Circuit

No. 14300

United States of America, ex rel Knut Einar Heikkinen,

Appellant,

vs.

Harry Gordon, Officer in Charge, Immigration and Naturalization Service

APPEARANCES

The Clerk will enter my appearance as counsel for the Appellant.

Carol King,
220 Broadway,
New York 7, N. Y.

(Appearance of Counsel for Appellee)

The Clerk will enter my appearance as Counsel for the Appellee.

C. U. Landrum,
Howard H. Gelb.

157 In United States Court of Appeals

ORDER GRANTING LEAVE TO BE HEARD ON RECORD WHICH CONTAINS EVIDENCE IN QUESTION AND ANSWER FORM, ETC.—MARCH 12, 1951

Leave heretofore having been granted to be *be* heard on typewritten record, the motion of appellee to be heard upon the record which contains the evidence in question and answer form is by the Court now hereby granted, and it will not be necessary for either of the parties to prepare and file a narrative statement. One complete copy of the record containing all necessary pleadings and evidence in question and answer form should be filed, and assuming that counsel for the respective parties each have a complete copy of the record, that is of all necessary pleadings and the evidence in question and answer form, such copies should be lodged with the Clerk at the time of the hearing and submission of this cause to this Court and each member of the Court would then have a complete copy of the proceedings.

March 12, 1951.

158 In United States Court of Appeals

ORDER OF SUBMISSION—FRIDAY, MAY 4, 1951

This cause having been called for hearing in its regular order, argument was commenced by Miss Carol King for appellant, continued by Mr. Howard H. Gelb, Assistant United States Attorney, for appellee, and concluded by Miss Carol King for appellant.

Thereupon, this cause was submitted to the Court on the record prepared by counsel for appellant and the briefs of counsel filed herein, with leave to counsel for appellant to file reply brief in five days.

159 United States Court of Appeals for the Eighth Circuit

No. 14,300

United States of America, ex rel Knut Einar Heikkinen, Appellant,

vs.

Harry Gordon, Officer in Charge, Immigration and Naturalization Service, Department of Justice, Appellee

Appeal from the United States District Court for the District of Minnesota

OPINION—JUNE 20, 1951

Miss Carol King for Appellant.

Mr. Howard H. Gelb, Assistant United States Attorney (Mr. C. U. Landrum, United States Attorney, and Mr. Ben C. Marien, Immigration and Naturalization Service, were with him on the brief), for Appellee.

Before GARDNER, Chief Judge, and THOMAS and JOHNSEN, Circuit Judges.

GARDNER, Chief Judge, delivered the opinion of the Court.

This appeal is from an order of the trial court discharging an order to show cause and denying a writ of habeas corpus. Appellant Knut Einar Heikkinen, an alien, was born in Finland in 1890. In 1910 he went to Canada where he continued to live until he entered the United States in 1916. At the time of leaving Canada he was a citizen of that country. While living in this country he worked as a builder and as editor of various Finnish language papers. He

married and has three children, all born in this country. Two daughters are married. At the time of the hearing in the trial court he was associate editor of a Finnish newspaper. His wife left him in 1932 and he followed her to Russia seeking reconciliation. He testified that he tried to live with his wife from 1932 to 1935, while they were in Russia. In 1935 he returned to the United States. While in Russia he was in charge of the transport of a Soviet building trust for one and a half years, being in charge of twenty to thirty people and twelve hauling trucks. During the remaining period of his sojourn in Russia he was a proofreader in a state publishing house. In leaving the United States in 1932 for Russia, and in returning in 1935, he did not obtain official passports. He was a member of the Communist Party from 1923 to 1930 and has attended Communist Party functions without membership subsequent to that date. Since returning to the United States he has spent fifteen years as editor of the Finnish newspaper, Eteepain. This newspaper plant was located in the same building as the National Headquarters of the Communist Party. Appellant was also editor of Tovari, a Socialist newspaper, and within the past two years has been a member of the Executive Committee of the International Workers' Order. He has never been convicted of any crime.

161 On November 21, 1949, appellant was arrested on a warrant issued by the Immigration and Naturalization Service. The warrant charged that appellant was subject to deportation for the reasons: (1) that he violated the Immigration Act of May 26, 1924, in that at the time of entry he was not in possession of a valid immigration visa; (2) that he violated the Act of October 16, 1918, in that he was at the time of entry and thereafter an alien who was a member of an organization which advises, advocates and teaches the overthrow by force and violence of the Government of the United States; and (3) that he violated the Act of October 16, 1918, in that he was at the time of entry and thereafter an alien who was a member of an organization which writes, circulates, distributes, prints, publishes and displays written and printed matter advocating the overthrow by force and violence of the Government of the United States. This warrant authorized appellant's release on bail in the sum of $10,000, but following his arrest he was released on reduced bail in the sum of $5,000.

On or about October 23, 1950, appellant was rearrested and detained by Harry Gordon, Officer in Charge of the Immigration and Naturalization Service, Department of Justice. This rearrest without bail was made pursuant to instructions by telephone and telegram from the Attorney General. Following his rearrest he filed petition for writ of habeas corpus, alleging that his rearrest had been purportedly effected under and by virtue of Section 23(a) of the Internal Security Act of 1950; that at the time of his rearrest

he was out on bail; that deportation proceedings have been instituted against him but that proceedings have neither been held nor completed; that he is advised and believes that the only reason for his rearrest is the enactment of the Internal Security Act of 1950, particularly Section 23(a) thereof, which among other things provides that, "Pending final determination of the deporta-
162 bility of any alien taken into custody under warrant of the Attorney General, such alien may in the discretion of the Attorney General (1) be continued in custody; or (2) be released under bond in the amount of not less than $500, with security approved by the Attorney General, or (3) be released on conditional parole"; that this provision does not authorize such an arrest; that his rearrest is arbitrary and an abuse of discretion on the part of the Attorney General and those acting pursuant to his request. The petition contained other allegations going to the truth of the charges contained in the warrant not here deemed material. The return admitted all the allegations of fact alleged in the petition but not the conclusions asserted therein, and we think there is no dispute as to the primary or basic facts pertinent to the issues presented.

At the hearing conducted at Duluth, Minnesota, October 30, 1950, there was offered in evidence on behalf of appellee copies of a telegram sent by the Central Office of Immigration and Naturalization Service and of the warrant of arrest. Mr. Gordon testified that he had telephone instructions from the Chief of the Investigating Division in New York, where the 1949 warrant of arrest reposed, to arrest. Judge Donovan denied the application "without prejudice, however, to relators reopening for the purpose of presenting anything additional * * *." Motion for rehearing was granted and on November 10, 1950, hearing was had before three District Judges. The petition for writ of habeas corpus was again denied and this appeal followed. On application appellant was admitted to bail in the sum of $2500.00, pending appeal.

In seeking reversal appellant contends: (1) that the Attorney General abused his discretion in rearresting appellant and
163 thereafter holding him without bail; (2) that appellant's rearrest was not within the terms of the statute; (3) that appellant was rearrested and until his release on appeal was held in custody without legal process; (4) that the court permitted the examination of appellant to go too far afield.

There is no dispute as to the basic facts. They were either admitted by the pleadings or established by uncontradicted evidence. The rules and rights of the parties in criminal and civil bail are similar in many respects. The accused or principal in either case is released from custody of the law and placed in the custody of keepers of his own selection, and it is said that the object of bail is to relieve the accused of imprisonment and the state of the burden of keeping him pending trial or hearing and at the same

time to secure the appearance of the accused at the trial or hearing. The denial of bail is not intended as punishment and bail will ordinarily be granted unless the enlargement of the accused will be a menace to the public security. No conduct on behalf of the appellant occurred subsequent to his original arrest and enlargement on bail which warranted the cancellation of his bail and his rearrest. The only thing occurring during that time was the enactment on September 23, 1950, of the Internal Security Act above referred to.

It is a general rule that an order granting bail after hearing is final and res judicata as to all questions except the amount. *Taylor* v. *Taintor*, 16 Wall. 366; *State* v. *Benedict*, Ia., 15 N. W. 2d 248; *State ex parte Marshall*, Ariz., 300 P. 1011; 6 Am. Juris., p. 100. Ordinarily in criminal cases, where one has been released on bail he can not be rearrested in the same jurisdiction on the same charge on which he was originally arrested. In a proceeding of this character, if subsequently to the enlargement of the accused
164 on bail he had been guilty of conduct menacing the public security, or if evidence were discovered subsequent to the granting of bail indicating that to enlarge him would be a menace to the security of society, then doubtless, his bail might properly be revoked and he might be rearrested. In *Zydok* v. *Butterfield, etc.*, 66 Cir., 187 F. 2d 802, the Sixth Circuit considered a case very similar to the case at bar. In that case the accused, was, before his original arrest, a member of the Communist party, and was financial secretary of the Hamtramck Division of the Communist Party of Michigan, and as such secretary he assisted in the collection of funds to be used in the defense of the Communist Party leaders who were tried and convicted in New York under the Smith Act (18 U. S. C., Sec. 2385) of conspiring to advocate the overthrow of the Government of the United States. In the course of the opinion by Chief Judge Hicks it is among other things said:

"Before his second arrest and while he was at large on bail he reported regularly to the Department of Immigration and Naturalization Service. The record fails to disclose that he has violated any law or that he is engaged or is likely to engage in, any subversive activities. The fact that he assisted in collecting funds for the aid of the Communist defendants being tried under the Smith Act can hardly be regarded as an objection to the allowance of bail, for these defendants themselves were allowed bail after the affirmance of their convictions and even during the pendency of their appeals. *Williamson* v. *United States*, 2 Cir., 184 F. 2d 280 * * *."

Again the court said:

"• • • While on the witness stand appellant claimed his conditional privilege against self-incrimination and upon that ground declined to testify touching his Communistic relations. We think that his refusal to testify should not have operated against him. *Blau* v. *United States*, 340 U. S. 159, 71 S. Ct. 223.

165 "We think that a fair consideration of the factors above set out in their aggregate require that appellant should have been granted bail in some reasonable amount. This view is more nearly in accordance with the spirit of our institutions as it relates even to those who seek protection from the laws which they incongruously seek to destroy."

The court held that there had been an abuse of discretion and that the appellant in that case was entitled to bail. It is now well established that mere Communist party membership does not justify detention without bail. *United States ex rel Potash* v. *Dist. Director, etc.*, 2 Cir., 169 F. 2d 747; *United States ex rel Pirinsky* v. *Shaughnessy*, 2 Cir., 177 F. 2d 708; *Williamson* v. *United States*, 2 Cir., 184 F. 2d 280. In *United States ex rel Potash* v. *Director, supra*, the opinion in which was written by Judge Augustus Hand, it is among other things said:

"The foregoing decisions and also, as it seems to us, the general spirit of our institutions make it improbable that Congress intended to give the Attorney General unlimited power over the admission to bail of aliens against whom deportation proceedings are brought. We think that it requires more than the general grant of power to fix bail in Section 156 to exempt the Attorney General from all control in the exercise of that function even if he should be shown to have acted in an arbitrary manner. This interpretation is particularly indicated in such a situation as the present where personal liberty is involved and there has been no determination that the alien is deportable. Prior to the passage by Congress in 1907 of the act empowering the administrative official to fix bail, various courts made it a practice to grant bail to aliens during deportation hearings."

In a concurring opinion, Judge Clark among other things said:

"• • • Several of these relators now appear to be at large upon substantial, though not unusual, bail upon criminal charges.
166 If such bail is adequate there, it does seem an anomaly to require absolute imprisonment upon noncriminal charges."

In *United States ex rel Pirinsky* v. *Shaughnessy, supra*, the court among other things said:

"But the long administrative record, in evidence below, fails to show any immediate or particular danger to be expected from

this individual, beyond other members of the Communist Party; and the administrative findings, filed since this proceeding was commenced, set forth no other ground than such party membership for his deportation. Unless, therefore, the Immigration Service intends to confine all alien Communists indefinitely during lengthy deportation proceedings, there is nothing in the record to justify the singling out of this individual for unusual treatment."

In *Bridges* v. *United States*, 184 F. 2d 881, it is said:

"The whole matter appears finally to boil down to the contention that Bridges is a proven Communist in that he was found guilty of perjury for swearing the contrary in his naturalization proceeding; and that the subsequent development of the Korean crisis renders him per se a menace to the public security, hence the district court was right in revoking his bail and ordering him confined. The conclusion, if we may say so, is as startling as it is novel."

It is worthy of note that while out on bond appellant's conduct did not differ from his conduct before his original arrest and the Attorney General did not deem such conduct inconsistent with his enlargement on bail. He has apparently observed all the conditions of the bail bond on which he was released and has at all times been available when and if required by the government and certainly there is nothing in this record to indicate that he will not continue to be so available in the future.

Appellee refers to the so-called second opinion in *Carlson* v. *Landon*, 9 Cir., 187 F. 2d 991. In that case application for
167 certiorari has been filed and petitioners applied to the Supreme Court for bail pending the disposition of the petition. The Supreme Court ordered that the petitioners be released from custody upon furnishing of bonds each in the amount of $5,000. Having in mind that the question involved was whether or not the appellants in that case were entitled to be enlarged on bail, the order of the Supreme Court is quite persuasive that the enlargement of appellant on bail would not be prejudicial to the security of the public.

Appellee relies strongly on the per curiam opinion of the Second Circuit in *United States ex rel De Geronimi* v. *Shaughnessy*, 187 F. 2d 896. It is first to be noted that this opinion does not purport to modify the views of that court as expressed in *United States ex rel Potash* v. *Director*, *supra*, and the facts distinguish it very readily from the case at bar. In the *De Geronimi* case the rearrest was "on the basis of information subsequently obtained." The opinion does not set out what this information consisted of but it is recited that "The return states ample ground for revoking the

bail as a matter of discretion," and it is also recited that "no proof was offered to contradict the allegations of the return." This opinion does not throw much light on the situation because it does not disclose what grounds were stated in the return but it does appear that they were based on information obtained subsequent to the relator's enlargement on bail. De Geronimi was a deserting seaman who had resided in this country less than a year and it may be inferred that there was likelihood that he would abscond.

In this connection it is observed that the Supreme Court in *Joint Anti-Fascist Refugees Committee* v. *McGrath*, 341 U. S. , held that the organization known as the International Workers' Order can no longer be considered a subversive organization.

168 In the instant case appellee urges as a circumstance warranting the denial of bail by the Attorney General that appellant within the past two years has been a member of the Executive Committee of the International Workers' Order. In the opinion in that case it is among other things said:

"The doctrine of administrative construction never has been carried so far as to permit administrative discretion to run riot. If applied to this case and compounded with the assumption that the President's Executive Order was drafted for him by his Attorney General, the conclusion would rest upon the premise that the Attorney General has attempted to delegate to himself the power to act arbitrarily. We cannot impute such an attempt to the Nation's highest law enforcement officer any more than we can to its President."

There is nothing to indicate that if enlarged on bail the appellant would not at all times be available, nor is there any evidence that if so enlarged his enlargement would result in any menace to the public security; in fact, such an argument is completely refuted by the fact that in this case the trial court granted bail during this appeal. This bail has been given and the appellant is at large. This, we think, goes far, if indeed it is not conclusive, to show that the action of the Attorney General in rearresting appellant and refusing to enlarge him on bail is arbitrary and an abuse of discretion. In the words of Judge Clark in his concurring opinion in *United States ex rel Potash* v. *Director, supra*, "If such bail is adequate there, it does seem an anomaly to require absolute imprisonment upon noncriminal charges." Under our system of jurisprudence one may not be condemned without a hearing, nor may he be punished before conviction.

Having reached the conclusion that the Attorney General abused his discretion in rearresting appellant and refusing to enlarge

169 him on bail, we pretermit consideration of the other contentions urged by appellant.

The order dismissing the writ of habeas corpus is reversed and the case remanded to the District Court with directions to proceed in accordance with the views expressed in this opinion.

170 United States Court of Appeals for the Eighth Circuit

No. 14300

UNITED STATES OF AMERICA, EX REL KNUT EINAR HEIKKINEN, APPELLANT,

vs.

HARRY GORDON, OFFICER IN CHARGE, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE.

JUDGMENT—June 20, 1951

Appeal from the United States District Court for the District of Minnesota

This cause came on to be heard on the record from the United States District Court for the District of Minnesota, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court, that the Order of the said District Court dismissing the writ of habeas corpus in this cause be, and the same is hereby, reversed.

And it is further Ordered by this Court that this cause be, and the same is hereby, remanded to the said District Court with directions to proceed in accordance with the views expressed in the opinion of this Court this day filed herein.

June 20, 1951.

171 (Clerk's Certificate.)

United States Court of Appeals for the Eighth Circuit

I, E. E. Koch, Clerk of the United States Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the typewritten record on which the appeal from the United States District Court for the District of Minnesota, was heard in said Court of Appeals, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Court of Appeals for the Eighth Circuit, except the full captions, titles and endorsements omitted in pursuance of the Rules of the Supreme Court of the United States, in a certain cause in said Court of Appeals, wherein the United States

of America, ex rel Knut Einar Heikkinen was Appellant, and Harry Gordon, Officer in Charge, Immigration and Naturalization Service, was appellee, No. 14,300.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, on the 25th day of July, A. D. 1951.

E. E. KOCH,
Clerk of the United States Court of Appeals for the Eighth Circuit.

[SEAL.]

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 961194 78

Supreme Court of the United States

OCTOBER TERM, 1951

No. 334

[Title omitted.]

Order allowing certiorari

Filed March 24, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

214755—52